Public Utilities FORTNIGHTLY

April 18, 1929

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

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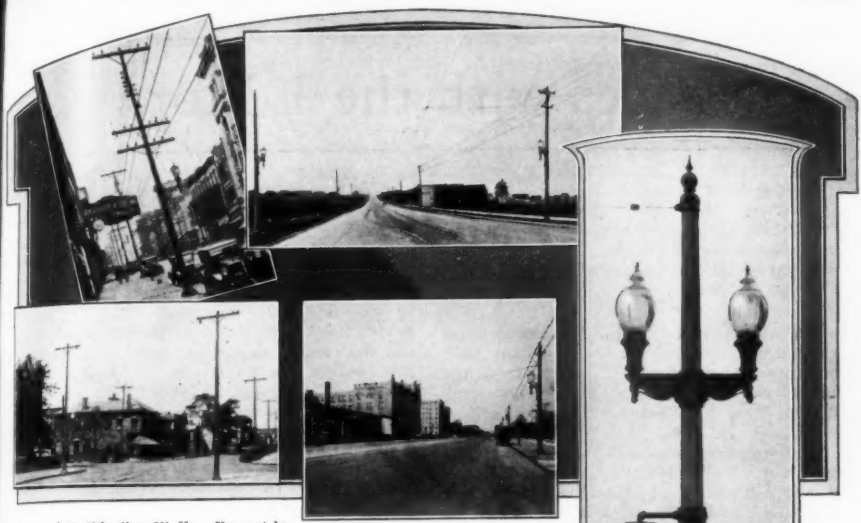
Public Utilities Fortnightly

VOLUME III — *April 18, 1929* — NUMBER

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

PUBLIC UTILITIES FORTNIGHTLY; a magazine dealing with the problems of utility regulation and allied topics, including the official decisions of the State Commissions and courts; endorsed by the National Associations of the Utility Industry and by the National Association of Railroad and Utilities Commissioners, and supported in part by those conducting public utility service, manufacturers, bankers, accountants and other users of the publication. Published every other Thursday; 75 cents a copy; $15.00 a year; with bound volumes and Annual Digest, $32.50 a year. Editorial and advertising office, Munsey Building, Washington, D. C., circulation office, Duffy-Powers Building, Rochester, N. Y. Entered as second-class matter April 29, 1915, at the Post Office at Rochester, N. Y., under the Act of March 3, 1879.



Upper left, Wheeling, W. Va. *Upper right*, Vancouver, B. C. *Lower left*, Zanesville, Ohio. *Lower right*, Cleveland, Ohio.

Cities Everywhere Stage Curb-line Clean-up

NEVER before has the City Beautiful plan met with such success as it has during the past few years. Cities everywhere are making their streets safer and more beautiful.

Important in this work is "cleaning up the curb-line." Dozens of Utilities, cooperating with municipal officials, have installed Union Metal Fluted Steel Poles and combined all street electrical equipment on this one set of poles.

The net result is economical service and more beautiful streets. This method has been followed in such cities as Detroit, Cleveland, Vancouver, B. C.; Wheeling, W. Va.; Pontiac, Mich.; Youngtown, Ohio; and is contemplated by many more. In every case invaluable good will has accrued to the benefit of the companies responsible for the improvement.

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Union Metal Fluted Steel Pole equipped with lighting units, traffic signal and trolley span wire support as used in Pontiac, Mich.

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Pages with the Editor

DESPITE the fact that PUBLIC UTILITIES FORTNIGHTLY has more than doubled its circulation during the past three months, each new issue is snapped up so quickly that every edition published this year is now out of print.

* *

YET so insistent has become the demand for additional copies of this magazine that, in order to accommodate its readers, the Editor has been obliged to reprint some of the articles in pamphlet form.

* *

THE excellent article by the well-known economist, Prof. Harry Gunnison Brown, of the University of Missouri, which was originally published in this magazine in the March 7th, 1929, issue under the title "Present Costs," has thus gone into a second edition.

* *

WHILE the article by Henry R. Hayes, formerly president of the Investment Bankers' Association of America, which appeared in this magazine under the title "14 POINTS —on the Effect of Commission Regulation on the Values of Utility Securities," has already gone into its third edition.

* *

LIKE Oliver Twist, our readers are crying "more"—and demanding that a special mess of porridge be prepared for them if the regular supply is exhausted.

* *

ALL of which gives pretty convincing evidence that the magazine is serving a useful and helpful purpose.

* *

As though further evidence were needed —which it is not—the Editor picks from his daily mail five commentaries from five widely divergent sources; these five cover a wide gamut of interests.

* *

THE first comes from the Editor's one-time professor of economics at Dartmouth College, who is now ocupying the chair of economics at a no less esteemed institution. He writes—

* *

"BECAUSE of its prompt reporting of all court and commission cases and its current comment on utility problems in general, we find PUBLIC UTILITIES FORTNIGHTLY a very useful adjunct to our work."

—PROF. FRANK HAIGH DIXON,
Princeton University, Princeton, N. J.

THE second letter comes from a public utility executive, who says:

"PERMIT me to extend my congratulations and compliments for the splendid March 7th issue of PUBLIC UTILITIES FORTNIGHTLY. The contents were more interesting to me than any magazine which I have read in a long time. I believe that one of the most important and worth-while jobs before the executives of public utilities in general and gas companies in particular is to set their rate schedule house in order, and the publicity which you are giving to rate matters is bound to help."

—C. C. CURTIS,
Vice-President & Manager, Fall River Gas Works Company, Fall River, Mass.

* *

THE third letter comes from a public official; here it is:

* *

"WE are very much pleased with the new PUBLIC UTILITIES FORTNIGHTLY. While the recent decisions of courts and commissions published therein are always of value, we feel that the new policy of publishing articles discussing general utility problems, as well as the regulation of the utility industry, will be of very great benefit to everyone interested in these questions."

—HON. LOUIS S. EPES,
Chairman, State Corporation Commission of Virginia.

* *

THE fourth comes from a well-known lawyer who is also a writer and lecturer on regulatory problems. He states:

* *

"WITH each new number I am more pleased with the magazine. It combines most successfully the news, editorial and reporting features, is well arranged and indexed, and a real help to a busy man."

—WM. A. WHERRY,
Wherry & Wright, New York City.

* *

AND the fifth comes from the head of one of our largest and most important utility associations:

* *

"THE discussions of utility decisions in PUBLIC UTILITIES FORTNIGHTLY are highly informative and indeed indispensable."

—OSCAR H. FOGG,
President, American Gas Association.

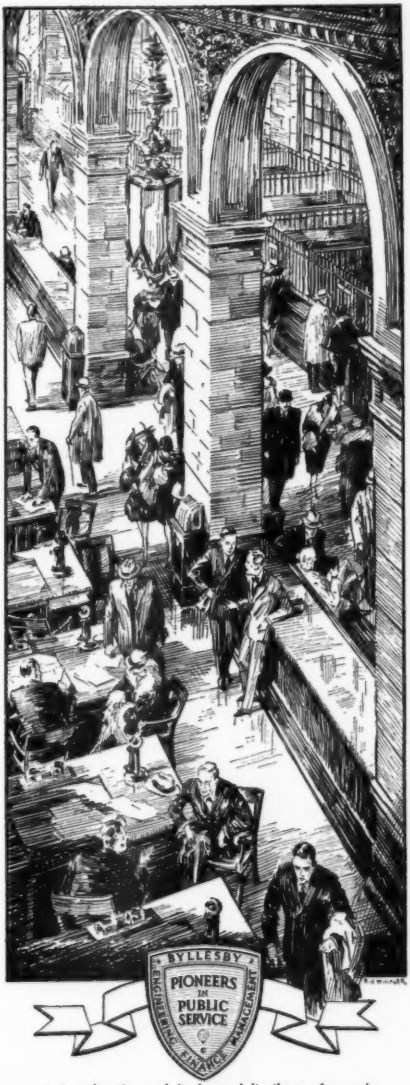
* *

HERE are some of the nuggets of legal lore that the reader will find in the "Pub-

(Continued on page VIII)

The *Capacity for* Modern Financing

AMERICAN industry moves in giant strides .... To continue its advance towards higher levels in public welfare, industry requires new capital and sound financial structures .... The services of our organization bring more than a quarter of a century of successful experience in the adequate financing of both large and medium sized enterprises .... Such financing involves much more than that of the moment and demands a continuation of responsibility towards the protection of future requirements . . . . . .



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lic Utility Reports" section in the back of this magazine:

* *

IN recent years the weekly pass has gained considerable favor on some of the street railway systems, but from time to time certain abuses are revealed. The New Jersey Board in the case of the Five Mile Beach Electric Railway Company (see page 305) has approved modifications of the plan to remove such abuses.

* *

EVERY utility company from time to time meets with cranky customers who are antagonistic to the company. The Colorado Commission, however, does not believe that this makes the customer an outlaw or outside of the pale so as to justify the company in discriminating against him in regard to a deposit to guarantee payment. (See page 307).

* *

PREPAYMENT meters which some years ago were quite common have become scarce in most communities. The Georgia Commission declares that such meters are highly expensive and out of date and discriminatory. (See page 309). The Commission at the same time sets forth its views on uniform rates in suburban territories and the desirability of a service charge instead of a minimum charge.

* *

FOREIGN control of utility companies does not meet the approval of the Vermont Commission. (See page 316). The Commission will apparently require evidence of public benefit from such control before a sale to a foreign corporation will be permitted.

* *

THE judgment of those who own and control properties affected is given weight by the Maine Commission upon an application for the approval of a consolidation, but there are certain principles governing the advisability of a merger which the Commission also considers. (See page 326).

* *

WHEN a town increases the taxes of a public utility how will the additional burden be met? This is the problem solved by the Maine Commission in the Milo Water Company Case. (See page 330).

* *

THE regulation of interstate motor bus operation has been a bone of contention for several years; it has now been decided by the Supreme Court that states cannot unreasonably interfere with interstate motor bus service. There are certain regulations, however, which a state may insist upon, and the Ohio Supreme Court has recently ruled on the question of the revocation of a certificate when an interstate carrier refuses to obey the state laws. (See page 335).

A CONSUMER who believes that a public utility should not require a deposit to guarantee payment has been unsuccessful in impressing his views upon the District of Columbia Public Utilities Commission. (See page 341). The Commission, however, set forth certain rules which should govern deposits and the establishment of credit.

* *

WHEN the Editor was recently asked by a prospective subscriber to define the editorial scope of PUBLIC UTILITIES FORTNIGHTLY he was on the point of stating that it deals especially with the problems incidental to the management of public utility companies.

* *

BUT that reply is too broad; it recalled the country doctor who, in explanation of his window-sign that bore the legend "Specialist," admitted that he was a "specialist in almost everything."

* *

To be specific, PUBLIC UTILITIES FORTNIGHTLY treats of the problems incidental to the *regulation* of public utilities by State Commissions and other regulatory bodies.

* *

WITHIN this special field, this magazine covers the entire public utility industry, ranging from the large and important groups represented by the electric light and power companies and gas utilities, to the smaller groups represented by the water companies, heat utilities and the new but rapidly-growing air-transportation and radio utillities.

* *

EVERY issue of the magazine contains information of value to all public utilities as a whole—articles and commentary that deal with the broad economic, financial, legal and political aspects of regulation.

* *

IN addition, each group will find in the magazine certain articles or items of specific interest to itself.

* *

AMONG the contributors to this issue of the magazine are:

* *

ROGER W. BABSON, statistician and lecturer on statistics and economics, who is known throughout the country as the creator of the famous "Babson charts:"

* *

FRANK P. MORGAN, Associate Commissioner of the Public Service Commission of Alabama:

* *

O. C. MERRILL, Executive Secretary of the Federal Power Commission:

* *

JOHN T. LAMBERT, one of the best known newspaper men of Washington, D. C., and a frequent contributor to the magazines.

—THE EDITOR.

APRIL

Utilities Almanac

Reminders of Coming Events — *Notable Events and Anniversaries*

18	T^{h}	The first cargo arrived at Newburyport, Mass., through the canals of Merrimack River—the costliest inland navigation project yet developed; 1795.
19	F	THALES created the first electrical phenomenon of record when he rubbed a piece of amber with a cat's fur, thus pointing the way to the electrical industry, 600 B. C.
20	S^{a}	The first general strike in the U. S. to be conducted by women for woman, was ended when 4,000 telephone operators of New England returned to work; 1919.
21	S	JOSEPH E. DAVIES, Chairman of the Federal Trade Commission, stated that one-sixth of the country's wealth and one-tenth of its people are dependent upon concerns under the Commission's jurisdiction; 1915.
22	M	The "Enterprise," an ornate steam omnibus built by WALTER HANCOCK for the London & Paddington Steam Co., caused consternation upon its first run, 1833.
23	T^{u}	The first railroad in Louisiana was opened between New Orleans and Lake Pontchartrain; much of it was built through swamps; 1831.
24	W	The first round-the-world traveller, MAGELLAN, was killed in the Philippines, 1521. ¶ *Middle West Geographic Division convention will open in Omaha, 1929.*
25	T^{h}	The people of Chicago were amazed to witness the first operation of a street-car system in the world when small, horse-drawn coaches were started in daily service, 1859.
26	F	MICHAEL FARADAY announced his epoch-making invention of the electric dynamo —the forerunner of our modern generators on which the electric light and power industry is based; 1831.
27	S^{a}	SAMUEL F. B. MORSE, who is credited with the invention of the modern telephone and is regarded as the father of the telegraph industry, was born, 1791.
28	S	"Governor Stanford," the first locomotive of the Central Pacific Railroad of California, began regular daily service between Sacramento and Roseville, 18 miles away; 1864.
29	M	The annual "billion dollar waste" in American railroads is laid to inefficiency in management, by union labor; 1921. ¶ *Southwestern Geographic Division convention will open tomorrow at Hot Springs, 1929.*
30	T^{u}	JOSHUA COPPERSMITH was arrested in New York "for attempting to extort funds from ignorant and superstitious people by exhibiting a device which he says will convey the human voice over metallic wires;" 1867.

MAY

1	W	The first cars for hauling passengers and freight over the tracks of the Pennsylvania Railroad left Philadelphia, drawn by horses, 1829.

"Only those things are impossible that we have not yet learned to do."
—Dr. Willis R. Whitney,

From a drawing by E. H. Suydam

Courtesy of the New York Edison Co.

CITADELS OF SERVICE

No. 2: *The impressive building of the International Telephone Company, located on Broad Street at Beaver Street, near the heart of the down-town financial district of New York City.*

Public Utilities
FORTNIGHTLY

VOL. III: No. 8 APRIL 18, 1929

The PUBLIC UTILITIES AND THE PUBLIC

THE California Railroad Commission, in its efforts to protect the ratepayer from being required to pay excessive rates through overcapitalization, has recently decided that when public utility stock is sold to stockholders at par at a time when the market price of the stock is above par, the Commission, in fixing rates, will not regard the dividend paid on common stock as representing the real cost of money obtained through the sale of stock.

Thus the Commission has served notice on the companies that if the stock were sold at the real market price, the cost of money to the utilities would be considerably less than under the plan of disposing of such stock to its stockholders at par. In one of the decisions, the Commission said:

"It is urged that we should continue to permit the company to issue its common stock at par regardless of what the market price of such stock might be. We do not agree with this general conclusion for the reason that we believe that the public has an interest in the price which the company receives for its stock.

"However, the relation between applicant's rate base, as disclosed by previous decisions of the Commission, and reports filed by the applicant, and its outstanding securities, is such as to warrant the granting of this application. It should be understood that if the Commission is hereafter called upon to fix applicant's rates or any of them, it will not regard the dividends paid on common stock issued by applicant at par when the market value of such stock is substantially above par, as representing the cost of money obtained through the issue of such stock."

Changing Ideas About the Heating Value of Gas for Domestic Use

THE question of heating content of gas, especially that for domestic use, is fast developing into one of first magnitude for utilities engaged in the service of this commodity. The gas industry since its remarkable "resurrection" following the nadir of 1922–1923, has advanced to a position stronger than ever in its history. But it still has many difficult problems. The splendid comeback was brought about by progressive policies and adaptation to changing times and needs.

The gas industry now faces the task of changing popular conceptions about the old fashioned utilities. No matter how far visioned those that control the destiny of the gas business may be, its free growth will be hampered unless a corresponding change in public sentiment is effected. The company of 1905 that furnished gas exclusively for lighting and cooking is one thing, and the company of today that furnishes service for a multitude of needs is quite another. Yet we find companies today functioning or attempting to function under laws designed in 1905.

Some years ago there was an epidemic of legislation and rulings among the various states for fixing gas standards. The New York legislature arbitrarily fixed a standard of 650 B.T.U. per cubic foot. The Illinois Commission in 1920 fixed a minimum of 565 B.T.U. The California Commission made it 570 and so on.

The history of this movement has not disclosed that such blanket regulation is well advised. There are local conditions and circumstances; there are peculiar needs of particular communities and finally there is the all important rate element; all of which factors may make it more advantageous, both from a public and from a utility standpoint to let each company prove the reasonableness of its calorific content in the undivided location.

The New York statute referred to was declared unconstitutional and unreasonable by a Federal Court; but, of course, there was involved the question of adequate return to the company under the increased standard. The Illinois Commission also found it advisable in two cases at least, to cut the limit from 565 to 480 B.T.U. Most laws on this subject have been softened so as to allow the granting of exceptional permission by the State Commission.

As the Washington Department has stated, the maintenance of a uniform standard heating value for gas throughout the limits of an entire state is not ordinarily practicable or economical, but the standard for each utility should be that value which, from experience and investigation may be found to be more practical, economical, and efficient with reference to local fuel supply.

This seems a sane view of the situation. The Association for Correlating Thermal Research (A. G. A.) for instance would be in a position to give much more competent advice on the best sort of gas for a particular community giving due regard to such factors as local fuel, local needs, and local rates, than would be effected by blind adherence to a rigid standard that might cost the utility and in turn

its consumers, more to maintain than it is worth.

In the recent case of the Western United Gas & E. Co. (Ill.) P.U.R. 1928D, 220, a reduction of B.T.U. content was allowed to encourage the use of coal mined within the state. This Illinois coal was very cheap but it was unfit to produce gas of higher value. Great economies of production and distribution were effected without any appreciable difference in service from the viewpoint of the consumer. By this order the company's consumers escaped a rate increase otherwise inevitable. Of course this cheap coal only prevailed in that particular section of Illinois, but, here again is evidence of the failure of state-wide gas standards.

There is also considerable evidence from experts that domestic gas of lower B.T.U. is even more desirable especially where accompanied by a reduction of rates, due to the fact that as B.T.U.'s are lowered there are less condensable hydrocarbons in the gases, and with the accompanying lessening of condensation in pipes there is an improvement in service conditions. These changes work to the advantage of the consumer by making a steadier flame at the burner and less variation in heating value due to condensation.

It is safe to say, however, that the control of heating standards will never be left to the discretion of the companies. This is a service matter absolutely subject to public regulation. Nevertheless, such regulation should be flexible and alive to the needs of the public and ready to permit real economies wherever they might be effected.

Even a franchise would scarcely give to the company the exclusive power to serve gas of the character it pleased. Late in 1927 the city of Galveston, Texas, passed an ordinance requiring the Texas Cities Gas Company to furnish natural gas at not less than 900 B.T.U. rather than artificial or mixed gas at about 550 B.T.U. which the company had been serving. The company contended that this was a violation of a clause in its franchise providing that no change in the character of gas should constitue a waiver by the company of its rights. Special Judge Hunt of the Galveston district court decided that this clause did not give the company the exclusive power over the character of gas furnished and that such power reposed in the city. Judge Hunt stated:

> "The court is of opinion that the city of Galveston not only has the right which it reserved in said ordinance franchise to require respondent to furnish natural gas, but also has such power by §§ 45 and 99 of its charter, and further that in the exercise of its police powers the city has the inherent right, irrespective of the charter provisions, in the interest of its citizens and the efficient and economical operation of their industries and for domestic purposes to require cheaper and better fuel to be furnished by respondent, so long as it seeks to retain the advantages it has obtained by reason of the franchise itself. Nor is the court of the opinion that the provision of § 6 that: 'And no change from time to time of the character of gas sold and distributed under this franchise shall ever be admitted to constitute a waiver or abandonment of the rights of the grantee or his assigns to afterwards substitute the same under the terms hereof,' was intended to give re-

spondent exclusive power over the character of gas it could be required to furnish; but that such provision was inserted for respondent's protection and benefit, so that the furnishing of one kind of gas, could not be construed as an abandonment of its right to supply the others and had no effect to control the rights and powers of the Board of Commissioners to require respondent to furnish either of the other two kinds of gas under the authority of the reservations contained in the franchise or by virtue of the charter provisions of the city."

Galveston *v.* Texas Cities Gas Co. No. 44694.

Evading State Regulation Under the Cloak of "Interstate Commerce"

FATE played a mean trick on the Pine Hill-Kingston Bus Corporation when it placed the state of New Jersey right across the river from New York. The Pine Hill Company some time ago obtained from the New York State Commission a certificate to operate between the big city and Kingston, New York. A number of intruders were run off the route and the company settled down to a comfortable enjoyment of what appeared to be a business made exclusive and kept that way by the state.

What might be referred to, however, as a "flying cloud" appeared on this sunny horizon, when a gentleman named Davis and his partner parked a shiny new bus right down near 42nd and Broadway and exhibited signs indicating that passage might be had to Kingston for a reasonable fee.

Investigation revealed the fact that Mr. Davis was ingenius enough to cross the 42nd street ferry and proceed 40 miles on the Jersey side of the Hudson before re-entering New York state near Tuxedo. This may have been, as the company intimated, somewhat unsportsmanlike, but it was a better route with less congestion and best of all it placed Mr. Davis' activities in the class of "interstate commerce" and hence beyond the power of the New York tribunals. Judge Hill of the Appellate Division held that a common carrier, passing through a foreign state en route, notwithstanding the fact that both terminals are in New York is engaged in interstate commerce unless the route is unreasonable or a subterfuge for the purpose of taking advantage of Federal statutes. The court refused to restrain Mr. Davis; and it is likely that he will continue unrestrained unless the New York company can arrange to keep him from crossing the river or to have northern New Jersey annexed to the Empire state.

Pine Hill-Kingston Bus Corp. *v.* Davis, 232 N. Y. Supp. 536.

Ratepayers' Concern in Prices Paid for Utility Properties

ALTHOUGH rates are usually fixed on a basis of value rather than capitalization Commissions have nevertheless frowned upon high prices paid for utility properties. There are a number of things it is held, depending on sound financing that also reflect on the quality of the service of

the operating company regardless of whether its rates might be fixed on the value of the property rather than on what it cost, and the greatest of these is credit. Public service companies that are doubtfully financed earn the suspicion and often the ill-will, not only of the immediate customers, but the private companies from whom these utilities must buy supplies. If watered stock injured only the investing public it would be bad enough; but where it undermines the service that is paid for by patrons with rates that would be adequate if it were not for financial mismanagement, it is held that it is time for the Commission to take action.

This principle has long been recognized in California, Indiana, Massachusetts and other states notwithstanding the legal requirements of rates fixed on present fair value. The sales, mergers, consolidations, and security issues of utility companies are closely scrutinized.

An interesting example of such supervision by the State Commission has recently come from Missouri. It appears that a short while ago seven small telephone exchanges were owned and operated by D. C. Myers of Green City, Missouri.

The North Central Telephone Company had wanted these properties pursuant to a consolidation program. This company is owned by a holding company, 41 per cent of whose stock is in turn owned by a Mr. Cheek. Mr. Cheek contracted with Myers to buy the properties for $70,000. When the company arrived on the scene Mr. Cheek agreed to sell to the company for $80,000. When the Missouri Commission was asked to approve of this arrangement, the Commission asked in return:

> "What justification is there for a utility owner to purchase property and sell it to the company he owns at a profit to himself?"

The Commission, in refusing to approve the application, concluded that such an action was not justified, in view of the fact that the properties were actually worth probably not more than $56,000. The Commission said:

> "Public utilities are granted virtual monopolies and are not intended nor should they be permitted to be made the basis of speculative profits. They are charged with the duty of rendering adequate service at rates reasonable, and commensurate with the service, and in return are entitled to fair returns upon the fair values of their properties, no more. And profits such as that herein proposed can actually be realized only through rates charged or securities sold to the public, all the more reason why they should be closely scrutinized and permitted only when shown to be absolutely necessary and justified beyond question.
>
> "It may be argued in this case that Cheek, by reason of the fact that he owns only a 41 per cent interest in the holding company, is entitled to compensation or preferred treatment from the holders of the remaining 59 per cent in return for the property he has acquired and is relinquishing to the consolidated interests, which, if true, is no reason why the operating company should be made to bear the burden. On the other hand it appears that any necessary adjustments could be made between the respective interests, through adjustment of stock equities, or otherwise."

Re North Central Teleph. Co. Case No. 6205.

Doubtful Wisdom of Statute Is Not a Constitutional Defect

THE Constitution, which is the usual yardstick taken by the judiciary to measure the validity of legislation is not always concerned with the wisdom of a law. The Constitution protects certain rights and powers but if these are not disturbed the proposed law can be as fantastic as a dream and yet receive the solemn sanction of the courts.

Recently a statute was attacked in Oregon because of alleged unconstitutionality in that municipalities were permitted to indulge in the rendition of utility service without restriction. The contention was that this was poor business policy and likely to be oppressive to the taxpayers. Judge McBride, of the supreme court, in sustaining the statute, stated:

> "That permitting cities to engage in the business of selling light and power outside of their corporate limits, without a central supervision of their activities, will tend to stifle private enterprises, goes without saying. That such a venture, by the city of McMinnville, may have proved financially profitable to the municipal treasury will have a tendency to induce other municipalities to attempt like ventures, is not improbable. What the city of McMinnville is doing or attempting to do, Lafayette, North Yamhill, Carlton, Dayton, and Williamina may also do, and we have at least a possibility of half a dozen towns competing with each other for the business of the surrounding country, without any central authority to confine them within reasonable business limits. It is usually easy to vote bonds for such speculative purposes, especially where a considerable portion of the community are nontaxpayers, or merely nominal taxpayers. These and other objections might be urged as to the impolicy of the statute, but, between questions of policy and questions concerning the constitutionality of a statute, the distinction is wide. A statute may be impolitic, even to the extent of being in a measure oppressive, and yet be constitutional. As to the first, the remedy is legislative, and, as to the second, the remedy is with the courts."

Yamhill Electric Co. *v.* McMinnville, 274 Pac. 118.

The Position of Utility Companies That Purchase Municipal Plants

ORDINARILY when a man buys a piece of property he succeeds to whatever right, title, and interest his predecessor had in it unless the vendor specifically reserved some of them. If the property has been injured by a third party prior to the sale giving the former owner a right to sue for damages, the purchaser succeeds to that right also. Assets, liabilities, rights of way, mortgages, and every other incident to the property favorable or unfavorable passes to the new owner with the title of the property.

But such is not the case when a man buys a utility especially if he buys it from a governmental body. "Let the buyer beware" is still a wise slogan to observe when dickering for municipal plants. Municipalities in many states have the right to pursue their own courses in the operation of their utility plants without interference from the Commissions as long as they stay within their respective

bailiwicks. They can do many things on their own initiative, or as the lawyers would say, "in their proprietary capacity" that private companies could not do without express permission from the state.

But now and then municipalities get tired of the utility business and sell their plants. Very frequently it is found that the economies to be gained from the consolidated generation of private companies with large power interconnection outweigh the advantages of local generation. In any event the company that buys the plant with the understanding that it can continue to do whatever the municipality had been doing may meet with an unpleasant surprise.

For instance the municipal plant at Julesburg, Colorado, has been selling current to the nearby municipal plant of Sedgwick. Not long ago the town of Sedgwick decided to sell its plant to the Public Service Company. The company seemed to assume that in buying this plant, it succeeded to the operative rights in the territory around Sedgwick formerly served by the municipal plant at Sedgwick. Therefore, in its formal application for a certificate Julesburg was not made a party to the proceeding. The authority was granted. Then Julesburg decided that while the old municipal plant could operate in that vicinity without asking anybody, the purchaser of the plant was obliged to show that it was better fitted to serve the territory than other nearby utilities such as, for instance, itself. A motion to reopen was made on grounds that Julesburg has as much right to be considered in the awarding of the new rights as the company.

The Colorado Commission in reopening the case admitted that it had gone too far in its original order and further stated:

> "It is true that the town of Sedgwick could, without any authority from this Commission, have constructed its own plant (People ex rel. Public Utilities Commission v. Loveland, 76 Colo. 188, P.U.R.1925B, 512, 230 Pac. 399), but the mere fact that the town of Sedgwick could have constructed a plant without authority from this Commission does not mean that the vendee of its distribution system could do the same. The reasons why a town needs no authority and a private corporation does need authority to construct a plant have been set forth in the cases decided by the supreme court of this state and need not be restated here. The reasons why the authority is needed in the case of a private corporation apply with the same force in the case of a utility whose property has been purchased from a municipality as in any other case."

Re Public Service Co. Application No. 765, Decision No. 2056.

Special Rate Contracts May Be Nullified by Commission Revision

It is fairly well established that when a utility makes a contract with its customers with regard to rates such a contract is subject to the existing law on rate regulation. In some instances the effect of this may be a virtual nullification of the contract, especially where the Commission overrules the rate features of the contract and declares that the utility

must serve at another rate fixed in accordance with its own findings.

Of course, the Commissions do not always overrule such contracts, and frequently they are given effect, where their performance will not result in discrimination. The Commissions may also enforce the service provisions of the contract without approving of the rate features.

As an example of this, twenty years ago the subscribers of the Crawford Telephone Exchange at Crawford, Nebraska, entered into a contract with the owner of the exchange whereby it was agreed that telephone service should be furnished them at a stipulated price with certain service privileges. The Nebraska Commission ruled that while it was not bound by the rate restrictions of this contract that it would give effect to it as far as it might be able by taking the view that the consideration which was given by the company was from a standpoint of the service established, and the company's obligation to serve the subscribers.

Re Whitney Teleph. Exch. Application No. 7006.

Issuance of Corrected Telephone Directories Makes the Distribution of Erroneous Copies a Moot Question

THERE is a story usually told to law students some time during their course about an individual accused of a crime who failed to appear at his own trial. The presiding justice sternly asked of the attorney for the defendant if he knew of any reason why his bail should not be forfeited. The attorney answered: "There are a number of reasons why the accused cannot appear, first of all he died last night." "Proceed no further," interrupted the justice, "your first reason is quite sufficient. Next case."

The purpose of this story is to teach the student lawyer in a simple way the lesson that the court will not sit to decide moot questions. Once the cause for litigation has been removed regardless of how or why it was removed, the court will not ponder abstract hypothesis for the purpose of reaching purely academic conclusions of what should have been done had it not been removed.

An example of this situation in utility regulation recently occurred in Maryland when a Baltimore attorney sued to enjoin the telephone company from further distribution of an issue of its directories containing an error in his listing. The injunction was refused in the lower court and the lawyer appealed. Before the appeal could be heard, however, the company had printed and distributed its next issue, which of course, contained the corrected listing. The court of appeals decided on these facts to dismiss the appeal on the ground that it involved a moot question and whatever injury the lawyer had sustained from the error would have to be remedied by a civil suit for damages and not by way of a useless injunction to restrain the distribution of a directory issue already out of date.

Baldwin *v.* Chesapeake & P. Teleph. Co. No. 109.

A Municipal Plant Is Compelled to Serve All Residents Who Seek Service

It is well known of course that a utility cannot pick or choose its customers from those who apply for service. Once given a specified area in which to operate, the company has a legal obligation to serve anybody within that area who is ready, willing, and able to pay for the service.

There is a little doubt, however, about municipal plants. It has been held that a municipal utility is under no obligation to serve anybody outside of its corporate limits. There is even some doubt as to whether they can be compelled to serve anybody who asks for service within their limits, especially where the Commission has no authority over such utilities. The Minnesota Commission however has decided that telephone utilities owned by towns are under obligation to serve the residents. The Commission, in directing an extension of service, comments on the situation as follows:

> "If the township of Allen does not furnish telephone service to the complainant and others who may apply for service within its boundaries, other telephone companies must construct lines within the township if its residents are to obtain telephone service. There are no other telephone companies operating telephone lines within the township. The township of Allen has a monopoly in the matter of furnishing telephone service within the township. Under our present laws, it is difficult for a second telephone company to show that public convenience and necessity require the construction and operation of duplicate facilities for the furnishing of telephone service when the existing organization can furnish such service. There is no information to the effect that any other telephone company desires or would care to construct telephone lines to serve residents of Allen township. It is therefore the duty of Allen township to furnish telephone service to all residents of the township when such service is applied for."

Wheelock *v.* Allen Township, M–1796.

Regulation of Local Utilities by the Federal Government in the Absence of State Commission

It has been a common thing for the courts and Commissions both Federal and state to puzzle over just when and to what extent the states may regulate interstate utilities without invading Federal jurisdiction, but when the tables are turned and there comes up for consideration the question of when the Federal government may regulate state utilities without infringing on states' rights, that—as Charles Dana would say—is news. Here is, in part, § 19 of the new Federal Water Power Act delegating new powers to the Federal Power Commission:

> "That in case of the . . . use in public service of power by any licensee hereunder or by its customers engaged in public service within a state which has not authorized and empowered a Commission or other agency . . . to regulate and control the services to be rendered . . . or the rates . . . therefor, or the amount or character of securities to be issued by any of said parties, it is agreed as a condition of

> such license that jurisdiction is hereby conferred upon the Commission upon complaint of any person aggrieved or upon its own initiative to exercise such regulation and control until such time as the state shall have provided a Commission or other authority. . . ."

Of course as a fundamental principle the regulation and control of utilities in interstate commerce is exclusively in the hands of Congress even though Congress fails to act. The logical converse of this proposition is, that the Federal government cannot regulate purely local utilities even though the particular state such as, for instance, Delaware, has failed to provide a Commission. What then is the basis for the regulatory powers granted in this § 19? The answer is —contractual relationship. Major L. W. Call, chief counsel for the Federal Power Commission explains the entire situation in an opinion submitted to the Commission upon its request. Even though the Federal government cannot invade the states' sovereign jurisdiction as a rate regulator, there is nothing to prevent Uncle Sam from assuming the humble role of a contracting party with the utilities on the other side.

Anybody can contract with a utility about rates subject, of course, to the approval of the Commission, *if there is one*. The humblest citizen of Delaware can contract with the electric company in his neighborhood about rates and nobody will question the terms once they are fixed. The statute assumes that if the humblest citizen has this power in such states as Delaware, *ergo*, the Federal government can do likewise.

What is the nature of this contract? The Federal government has authority to grant or refuse permits for the exploitation of water power affecting all navigable streams. It can grant these permits in return for an agreement by the company that it will observe regulation by the Federal Power Commission until such a time as the state sees fit to do its own relating. Thus is born the contractual relationship between the government and the utilities.

But there are still some questions that the lawyers will probably ask about this arrangement. Suppose the state doesn't believe in utility regulation—doesn't want regulation by itself or anybody else. Can it be argued that the failure of the state to provide a regulatory agency signifies a legislative policy opposed to regulation of any sort even under guise of a contract? If such were the case could this state restrain the Federal Commission from exercising its powers under these "contracts?" Has the Federal Commission in such states the power to compel the utilities as a condition to permission to develop water power, to bargain away its right—if it *is* a right—to be free from utility regulation in accord with the policy of the state? Could the state not only refuse to regulate utilities itself but also demand that the Federal Commission stop regulating them? These are questions that may be raised some day concerning the validity of this act.

THE ECONOMIC SIGNIFICANCE OF "Customer Ownership"

"Public ownership, which was such a bugbear to the early utility promoters, is coming rapidly, but it is coming in a way never anticipated in those early days. It is now called customer-ownership and employee-ownership."

LOUIS H. EMERSON,
GOVERNOR OF ILLINOIS.

THE public utilities of the United States are slowly passing into the hands of the people. This development is being brought about by a combination of circumstances; one of them is the gradual expansion of public utility service and the consequent growing need of capital. The fact that this capital is being largely furnished by the customers and by the employees of the utility companies is significant not only of the sympathetic attitude of the public toward its utilities, but also of the stabilizing effect that the present form of regulation is having upon the value of public utilities securities.

The number of shareholders in just one group of utilities alone (the gas, electric light, and power industries) in 1925, according to recently compiled figures, was 2,611,279, representing an increase of more than 100 per cent in seven years.

The American Telephone and Telegraph Company now is owned by 450,000 stockholders; this is the largest single list of stockholders in the world.

A recent analysis among 19,000 stockholders of gas and electric utilities stockholders revealed that 25.9 per cent of this number were housewives; 11.1 per cent were executives and proprietors of business houses; 10.7 per cent were skilled laborers; 8.4 per cent were clerks; 8.2 per cent were engaged in professional work, and 7.6 per cent were employees.

This development has been aptly termed an "economic revolution." Our large corporations are becoming nationally owned; among the largest and most important of them are the utility corporations.

In the following brief but pointed statement, prepared especially for PUBLIC UTILITIES FORTNIGHTLY, Mr. Roger W. Babson, one of the foremost statisticians and economists in the country, expresses his opinion of the significance of this phenomenon.

BY ROGER W. BABSON

PUBLIC utilities today are where the railroads were seventy-five years ago—when you had to change cars five times between New York and Chicago.

Compared with future development, the public utility of the present is a mere forecast of the boundless possibilities ahead.

Most bonds of light and power companies now being offered should some day be underlying liens of super-power systems with mammoth central generating stations. No reach of the imagination can compass the uses of electrical energy which are likely to be evolved in the days to come.

Homes, factories, stores, railroads, and manifold other activities should —during the next ten or fifteen years —triple the present demand for electric current.

Light and power companies are in a unique position. Unlike the average business, they have a very small labor item and high capital item. Moreover, the utility's cost for labor may be further cut by technical improve-

ments. In other words, per unit of production, the light and power company needs relatively few workmen, but large capital expenditures. The ratio sinks as output soars and, to cap the climax, human laborers can be partly replaced by mechanical robots!

As civilization moves forward, the utility can benefit on both the demand and the supply side of the equation. Almost every new important invention either multiplies the demand for power or cuts the cost of power production and transmission. The cost of producing and transmitting electrical energy will decrease rather than increase. Owing to the fact that the larger the generating plant the lower the unit cost, such companies have little to fear from competition.

I BELIEVE that carefully selected securities of well managed companies supplying light, power, gas, and other utilities, are in many ways the best investment now available, considering both security and yield.

I oppose government ownership as inefficient and corrupting; but I heartily approve customer ownership.

I know of no investment, paying over 6 per cent, which is as safe as the first preferred "customer ownership" stocks of such companies.

When every user of a product is a stockholder of the company producing it, we will have a condition which will be about 100 per cent efficient and fair. Soundly formulated, customer ownership of this kind is one of the greatest contributions to economic welfare and progress which have been developed in recent times. It is a subject that should be studied not only by economists, not only by financial leaders, but especially by the men and women, the customers themselves, who are the chief beneficiaries of this splendid institution.

In addition, it would be a fine thing if some other industries take similar steps in this field of customer ownership, where the utilities are leading the way.

CUSTOMER ownership accomplishes in an intelligent, sound, and effective manner far bigger achievements than the reformers can in their wildest claims. So far as the regulation of utilities is concerned, I am convinced that in so far as any regulation may prove to be desirable, it should be State and not Federal regulation. Federal regulation of public utilities would impair the utilities and imperil the public. It is a bad plan and it wouldn't work.

With equal emphasis I will state my opinion that we should do nothing in a legislative way that will drive away capital which is so much needed for expansion and greater service.

No business can thrive amid poverty of capital caused by shortsighted legislation or long-distance regulation. The public utility is peculiarly impeded by foolish work of this kind. As I have already intimated, the utility requires a relatively larger ratio of capital because of its lower labor costs. It requires expanding output (with resulting call for capital), because the greater the product, the smaller the unit expense.

Adequate provision of capital, encouraged by businesslike and common sense treatment, will enable the utilities to perform in a wonderful way the function for which they were

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Roger W. Babson

created. They will become utilities in a sense that will give new meaning to the word "utilities." They will become agents of social service to a degree that will give added emphasis to the word "public."

THE DIMINISHING BREAD LINE AT

The Back Door of Our Utilities

Public utility service—railroad, steamship and bus transportation, electric, telephone, gas and water service—costs money to deliver. "Free" service, in the form of passes or below-cost rates, accorded to a privileged few, is paid for eventually by the other ratepayers. This article points out the successful efforts of the Commissions to stamp out this discriminatory and wasteful practice.

By HENRY C. SPURR

THERE was an eccentric fellow in New York city known as "Top Coat Dan." He got his name from his habit of wearing several coats. He did this because he often slept in available spaces out in the open. The extra coats served for mattress and blanket at such times.

Top Coat Dan was always on hand whenever there was a free soup line. He would hang around for hours waiting for a hand-out. One night he was found asleep in a corner of one of the subways. When arrested it was discovered that he had a bank-book showing a large sum of money on deposit in his name.

So, it appeared, Top Coat Dan, with a fat bank account, had been absorbing soup at somebody else's expense.

We may feel resentment against Top Coat Dan because of this disclosure, or we may merely smile at his odd way of keeping the wolf from the door; but just the same a good many of us are in the hand-me-something class, without knowing it, stoutly maintaining our right to be there, and calling upon the politicians to keep us there.

ONE of the chief aims of public service regulation has been to get rid of free soup lines in public utility business; and one of the most troublesome problems just now is the reduction of the quota of Top Coat Dans—that is to say, of well-to-do consumers who are looking for hand-outs.

This has been, and still is, no easy job. It does not necessarily show any lack of moral fiber on the part of those who receive the hand-outs, as in the case of Top Coat Dan, but rather ignorance of the fact that they are really in the free consommé line.

The utilities are, of course, largely to blame for the hand-out business. Having established it in the early days, it has grown into a custom, and customs are not easily changed. What is received at first as a privi-

lege, soon comes to be regarded as a right, and is, therefore, not easily given up. If a hand-out is from the very first disguised as something to which the recipient is entitled, the struggle for its retention is apt to be very spirited. That is why the attempt to abolish public utility hand-outs on a large scale often meets with great popular indignation.

THE soup line in the shape of "free passes" made its appearance very early in the railroad business. The first pass authorized by the old Mohawk & Hudson Railroad is shown by the minutes of May 9, 1833, which read as follows:

> "RESOLVED: that his Honor, the Chancellor, be permitted to pass over the road free of charge, and that the president be requested to communicate the substance of this resolution to him."

Frank Walker Stevens, in his history "The Beginnings of the New York Central Railroad," says of this resolution:

> "The reasons for this are not disclosed, but it cannot be considered other than a graceful courtesy and mark of respect."

This, it will be observed, was in 1833. The burden of this class of hand-outs, however, was soon felt. By 1849 the company was anxious for relief from it; but it is significant that the company realized, even then, that to get it was beyond its own power. It announced that it was ready to join with the Utica & Schenectady Railroad Company in petitioning the legislature for a law prohibiting the issuance of free tickets on their respective railroads.

The pass hand-out became a matter of concern on the Utica & Schenectady Railroad as early at 1846. In that year the board of directors adopted the following resolution:

> "RESOLVED that from and after the 16th day of April, instant, no person except the officers and agents of this company, be allowed to pass over the Utica & Schenectady Railroad.
>
> "RESOLVED that the secretary send a copy of this resolution to the president of each railroad company between Hudson's river and Buffalo, and that the same be published."

The Syracuse & Utica Railroad seems also to have been troubled over the free ticket soup line. President John Wilkinson made this statement as early as 1849:

> "The number of persons who pass free upon the railroads in this state is very large and is increasing. This company has endeavored to restrict the number within some reasonable limit, but has not been as successful as could be desired, by reason of the fact that other companies pass them, and when the same thing is declined on this road, it leads to controversy, and often induces an undeserved hostility which is exhibited in various ways. So far as we are informed, the number of free passengers is very much greater in this state than in other states, while in foreign countries, as we are advised, they are not allowed at all. We constantly pass great numbers free because of inability to pay. This is all proper, but beyond this class of persons it is very questionable whether any should be passed free.
>
> "As the railroad is made to carry passengers for pay, the rate should be uniform, and it is unfair to those who do pay, to pass any considerable number of persons without pay. It is also unfair to the stockholders, and is with them a subject of

just and somewhat general complaint."

It should be noticed in passing that President Wilkinson was here complaining only of Top Coat Dans—persons able to pay their own way, who were nevertheless looking for hand-outs—and that he appreciated that favors of this kind were unfair to persons who paid for their tickets, as well as to the stockholders of the railroad.

He seemed to think, however, it was right to carry "great numbers free because of inability to pay." It has since been learned that even this charitable practice is unfair to the other passengers. Under the modern theory of regulation, utility companies are not allowed to contribute to charitable enterprises at the expense of their ratepayers. This rule is now very well established.

How this applies to some present day problems will be pointed out a little later.

THE pass evil is mentioned mainly to show how hard it is to get rid of hand-out seekers. In spite of the efforts of the early railroads to abolish free tickets, the pass hand-out flourished for many years. It was not until the public was told, and believed, that the railroads were using passes for purposes of their own, that legislatures could be found to prohibit this form of gratuity. The pass was often given ostensibly as a return for service or expected service to the railroad company, but it was really a hand-out, and the recipients, whether they were aware of it or not, were in the free soup line.

When public utility companies began to be regulated by State Commissions, hand-out practices of various kinds were well entrenched. Rate schedules were honeycombed with free service provisions. Municipalities were the favorite beneficiaries of this system. Theoretically, free service, as in the case of free transportation on the steam railroads, was given in return for something; but it was really just a hand-out, at the expense of the ratepayers. Part of the consideration for the grant of franchises was free service to the cities and towns: free water, free electricity, free gas, free telephones, and free transportation of officials and other servants of the people on local traction lines—in some cases free service to officials when not on official business. The last mentioned officials, at least, were Top Coat Dans in the free soup line.

ONE of the first things the Commissions did when they came into power was to put a taboo on this form of hand-out. They said the practice resulted in "discrimination."

Now the word "discrimination" has the quality of elegance. Its pedigree is good. It fits the case. No one can say it is not accurate; but it does not mean much to the busy man. What is wanted for him is some good, clear, up-to-date form of speech that he will understand. So in plain words it may be said that what the Commissions were really trying to do in abolishing free service was to stop hand-outs at the expense of the ratepayers. If utility customers could be made to see that discrimination in rates is only one way of handing something to somebody at someone

¶*"The pass was often given ostensibly as a return for service or expected service to the railroad company, but it was really a hand-out, and the recipients were in the free soup line.*

¶*"It was not until the public was told and believed that the railroads were using passes for purposes of their own that legislatures could be found to prohibit this form of gratuity."*

else's expense, they would know what a Commission means when it stamps a rate as discriminatory. Discrimination in utility rates really means free soup to some ratepayers at the expense of other ratepayers.

The utilities themselves have for some time been engaged in a struggle to shorten the free soup line, just as the early steam railroads wrestled with the task of shortening the free ticket line. They often meet with stiff opposition.

One illustration of this may be seen in the present effort of the gas companies to free themselves and certain of their customers from the shackles of unprofitable accounts, one of the persistent forms of hand-outs. It is especially difficult to get clear of this kind of gift enterprise, because it is not an out and out free soup proposition. Customers get only a part of their soup free. They pay for some of it and having done so, think they are paying for all of it.

THE problem of banishing this sort of a hand-out by the adoption of scientific gas rate schedules is acute in New York state right now. It arose several years ago when certain companies tried to put a "service charge" into their rate schedules. It is well-known that under flat rates, a large number of consumers receive hand-outs, that is to say, service at less than cost. These customers get their hand-outs, not at the expense of the companies but at the expense of other ratepayers.

A customer of a gas company, for example, causes certain expenditures when he is connected with the mains, whether he uses any gas or not. It costs something to furnish, install, maintain, and read the meter, and to keep the account and render the bills. If he obtains this service for nothing or for less than cost as he does when he uses no gas or little gas, he gets a hand-out at someone's expense. He is in the free soup line. If he is able to pay, he has no business in that line, and if he is not able to pay, it is not up to the other customers to supply him.

The service charge was put forward to take care of these expenses, which, in the language of the industry, are called "customer expenses." If the service charge is allowed, it prevents a house owner who locks his doors for a season, while traveling or living elsewhere, from fastening the cost of maintaining his service connection upon the ratepayers who stay at home. There are a good

many customers like that whose houses are shut up half the time; and a good many others who stay at home who do not use enough gas to pay for keeping in the meter, and who are well able to pay for that service.

THE Commissioners everywhere have agreed that such a charge is just, as it prevents discrimination. It shortens the soup line. In some instances, however, the Commissions have refused to allow a service charge, because it was not understood by the public and was, consequently, unpopular. In New York state the legislature has gone so far as to forbid it. Still the gas companies, in the face of such obstacles as this, are trying every which way to abolish the free soup line, which manifestly tends to prevent the expansion of their business. A business loaded with hand-outs cannot be as free to grow as one that is not.

The Brooklyn Union Gas Company recently tried to do away with hand-outs of this kind by filing a schedule of rates which, among other things, provided for a general service rate of 95 cents for the first 200 cubic feet of gas, or less, and a charge of 9 cents for each 100 cubic feet of gas beyond the first 200 feet. On February 15, the New York Public Service Commission, by a divided vote, rejected this schedule.

Commenting upon this decision of the Commission, Corporation Counsel Nicholson said:

> "The effect of the schedules would have been to increase the new rates greatly for the smaller consumers, and to reduce the rates for the larger consumers. I maintained that 95 cents per month for the first 200 cubic feet or less was in fact a service charge, which is prohibited by § 65 of the Public Service Commission Law. I contend also that the rate was discriminatory against small consumers, and that the amount exceeded a reasonable compensation for actual consumers' costs."

WHEN the corporation counsel says that the proposed rate would increase rates to small consumers and lower rates to large consumers, he throws no light whatever upon the question at issue, which is: Are these consumers whose rates will be raised now receiving hand-outs at the expense of those whose rates he says will be lowered? If they are, then those who now receive the hand-outs should have their rates raised, and those paying for the hand-outs should have their rates lowered.

If, on the other hand, the proposed rate would, as the corporation counsel says, be a discrimination against the small consumer; that is to say, if it would amount to a hand-out to the large consumer, at the expense of the small consumer, the small consumer would be justified in complaining that his rates ought not to be increased. There is no reason why any one should get free or partly free hand-outs at the expense of the other ratepayers.

Whether other gas companies would have made similar applications has nothing to do with the question at issue. If other gas companies pass hand-outs to one group at the expense of others, they ought to apply for leave to quit doing it.

Morris Hotchner, attorney for the Gas Consumers' League, in a statement printed in a number of daily newspapers, after the decision was an-

nounced, said that he had received

> " . . . positive information that if the Brooklyn Union Gas Company had won its case, all other gas companies in the city, and indeed, the whole state of New York, would have made similar applications for increased gas rates, disguised as initial charges."

He thanked Mayor Walker and Corporation Counsel Nicholson for intervening in behalf of the consumers and aiding them in fighting the proposed schedule. He said the league would be extended to all boroughs to protect the rights of the public against "improper exaction" by public utility corporations.

Mr. Hotchner, in characterizing the company's rate as an "improper exaction" is obviously begging the question. He may be right. He may be wrong. The question is: What is a proper charge for the service?

Are some of the customers of the company obtaining hand-outs at the expense of other customers? If they are, it is the hand-out customers and not the company who are doing the "exacting." It looks very much as if the attorney for the Gas Consumers League is fighting for hand-outs.

Mayor Walker also expressed pleasure at the decision. He said he had instructed the corporation counsel to oppose the gas company's application "not only because I was convinced that it was not justified in law, but also because it was wrong in principle, and an injustice to the families and homes of the people in Brooklyn and Queens."

"If the company had won," he declared, "other companies probably would have made similar applications. I think we have stopped that, and have erected a protection for all the people of the state."

MAYOR Walker's statement, of course, means nothing whatsoever. Why he considers the rate unjust to the families in Brooklyn and Queens, his newspaper declaration does not reveal. It is probable, however, his view is based on the sole fact that the consumers he has in mind would have to pay more than they now do if the proposed schedule were in effect.

LET us now examine an opinion favorable to the company's contention to see upon what ground it is based. Chairman Prendergast, of New York, one of the dissenting Commissioners, in referring to the justice of the proposed change, said:

> "The present flat rates of the Brooklyn Union Gas Company are unjust and unduly discriminatory in that customers of convenience are carried at the expense of other consumers.
>
> "It is apparent that when an application is filed for service, certain costs follow in orderly sequence. These costs are due to the initiative of the customer—application for service, unlocking the meter, meter-reading, collecting, commercial bookkeeping, other costs of service, locking the meter—down to the application for discontinuance of service and payment of the final bill.
>
> "The application for service carries with it an implied obligation to keep the account at least compensatory, and a rate structure should be such that this will automatically follow. The existing rate structure does not affect this, so the remedy lies in the distribution of such costs."

So it seems that what the gas company was trying to do was to frame a

schedule that would prevent the hand-outs which always result from flat gas rates. Whether this was a violation of the spirit of the statute forbidding a service charge need not, for the purpose of this article, be considered.

What the company was trying to do is economically sound. A flat gas rate schedule, with no provision for making customers pay the actual costs they incur, is a free soup hand-out schedule. As such it is unfair to those customers who do not receive the hand-outs but who have to pay for them.

In some respects these hand-outs are worse than free tickets or passes on railroads. Passes were often given as previously stated in exchange for some service or favor rendered or expected to be rendered by the recipient to the company. Free service under flat rate schedules by gas companies to unprofitable customers is given with no hope of anything in return. There is no excuse for it whatever.

The usual argument in support of this form of hand-out is that it is given to poor people who cannot afford to pay for it but who ought to have the benefit of it. The records of the gas companies, however, show that this is not so; that if the customers who get these hand-outs do not all have fat bank accounts like Top Coat Dan, many of them do, and that the great majority of them are well able to pay for what they get.

Assuming, however, that the gas customers who receive this gratuity are poor persons, that fact does not justify hand-outs at the expense of the other ratepayers. President Wilkinson of the Syracuse & Utica Railroad, as stated, thought persons who could not afford to pay railroad fares should be carried free; but we now know better. No legal duty rests upon one rider to pay the fare of another, no matter what the latter's circumstances may be. That duty, if it exists, is one which rests on the entire community. How far the individual may wish to relieve the community of providing free service by personally assuming it, is a matter for his own conscience to decide. A railroad company has no right to force that obligation upon passengers who pay their way.

The same is true of free or partly free gas service. The company, in trying to get rid of dead-head service, is protecting its paying customers.

Let us take another illustration of a similar nature.

Some years ago a good many prepayment meters were installed by gas companies. A customer would put a 25-cent piece in the slot and would receive 25 cents worth of gas. When that supply was exhausted, he would put in 25 cents more and receive another installment of the company's product. But these prepayments meters have gradually gone into the scrap-heap, because it was appreciated that they discriminated, as the Commissioners say, against customers receiving service through the regular meters. Without going into details it is sufficient to say that these customers did not use enough gas, at the price charged to pay for the cost of the service. So, the prepayment meter customers, because of the fact that they did not pay the full cost of the

service to them, got a nice hand-out at the expense of the other ratepayers. The Georgia Commission in dealing with such a case, recently said:

> "If the prepay meters were to be continued, under the new rates, it would result in the small users of this service receiving gas for less than actual cost, resulting in rank discrimination. To the extent that such discrimination would be reflected in the cost of the service to the larger consumers, it would mean that those of the larger consumers would have to pay a loss sustained on the prepay meter customers."

What the gas companies are now trying to do is to free the business from the present unprofitable regular meter service. They want to abolish hand-outs, partially, at least, for the same reason that the early railroads desired to eliminate free tickets.

Re Georgia Power Co. P.U.R.1929B, 309.

It was easier, however, to get rid of semi-deadhead customers of the prepayment meter class than it is to free the books from the semi-deadhead part of the service through regular meters; because the latter class of service is received by a much larger number of customers. Nevertheless, one class of hand-out gas service is as bad as the other from an economic standpoint.

Opposition to the abolition of hand-outs in the gas business will exist just as it did to the elimination of passes on railroads; but this will be gradually overcome as the public comes to understand the problem.

Most of the customers now in the free soup line will not want to stay there, if they can be made to see their true economic position. Americans, as a rule, take pride in their ability to pay their own way.

Top Coat Dans are the exception.

What Is "Propaganda?"

If the act of propagandizing is in itself a sin or a crime, there are many associations formed for worthy purposes which must come under the ban. For instance, the Anti-Saloon League has been one of the most prolific sources of propaganda in the history of the United States. The American Red Cross is another. In fact, you can call the roll of all the societies and associations devoted to human uplift, and you will find that "propaganda" is in every instance their chief reliance—their strongest weapon. Therefore, we may conclude that propaganda, *per se*, is not inherently evil in character. "Propaganda" means nothing except publicity concerning things that are to be propagated—things that some individual or organization wants done.

The public utility interests primarily want the public to have a right conception of the service they render, and of the conditions they face. To present this effectively constitutes their principal propaganda.

—James A. Metcalf.

Some Common Fallacies About State Commissions

"I know that every fellow thinks that his crow is the blackest," writes the author to the Editor, "but if you will make even the slightest investigation of the situation in Alabama, you will promptly realize that there is not a more persecuted Commission today than this one. This Commission, for example, has recently put into effect an order reducing the revenues of the Alabama Power Company by approximately $312,000.00, yet it is being abused roundly by the radical press for having done so. We are receiving sarcastic letters from resident customers, yet upon investigation, in many instances these customers are found to have received from $12.00 to as high as $75.00 per year reduction in their bills."

By FRANK P. MORGAN

ASSOCIATE COMMISSIONER OF THE PUBLIC SERVICE COMMISSION OF ALABAMA

THE most common fallacy concerning State Commissions is the popular belief that letters, petitions, and verbal statements made in private conversation can and should be treated as evidence by the Commission in formal docketed cases.

Such communications are valuable only to the extent of making known to the Commission that the public, (or a certain portion of it), is either in favor of or disapproves of some formal petition or rate schedule that is filed before the Commission. The age-old right of a litigant to cross-examine those who oppose him in court cannot be arbitrarily set aside by any court or Commission.

A complaint about utility service is quite another thing. Most complaints can be handled by correspondence or by telephone and telegraph; in fact many complaints about rates can be adjusted on the informal dockets which most of the Commissions have adopted. It is probable that the procedure before other state bodies such as State Highway Commissions, State Tax Commissions and others, in view of the fact that they are almost entirely informal, has confused a part of the public about what constitutes evidence before its Public Service Commission in formal cases.

Opinion, unless the witness had qualified as an expert, is not evidence before such Commissions as ours.

"An order based upon a finding made without evidence is void." *

"An order based upon a finding made upon evidence which clearly does not support it is an arbitrary act against which courts afford relief." †

RATE comparisons are worth but little unless a similarity of conditions is shown, yet there are few rate cases before State Commissions in which some witness does not appear and attempt to introduce the lowest

* The Chicago Junction Case, 264 U. S. 258, 66 L. ed. 667, 44 Sup. Ct. Rep. 317.

† Interstate Commerce Commission *v.* Union P. R. Co. 222 U. S. 541, 56 L. ed. 308, 32 Sup. Ct. Rep. 108.

rate that he is able to find in America or indeed in Canada. The United States Senate, once spoken of as "the greatest deliberative body in the world," is about the only body I know of where such comparisons are given any weight.

The veriest novice in rate making would not dare offer a rate comparison as evidence before the Interstate Commerce Commission if he knew that conditions in the territories served showed great dissimilarity.

This lack of knowledge of the average man as to what constitutes evidence is frequently taken advantage of by a certain type of so-called traffic expert who represents shippers. He writes a vigorous letter to his State Commission—sending a copy, of course, to his client—in which he opposes a rate schedule filed for the approval of the Commission by a railroad; then on the day of the formal hearing he either fails to appear or appears but offers no evidence and asks no questions of the railroad's witnesses. His client thinks his interests have been well protected by his traffic expert although the traffic expert knows this is not the case.

Under such circumstances the Commission's staff is instructed to secure all the information it can in order to bring the true situation clearly before it, but the staff has great difficulty in finding out trade conditions that are known better by the men who are engaged in manufacturing and marketing the commodity than by anyone else.

THIS practice is not unknown among a certain type of politicians. They appear before the Commission and state that they do not want to be put under oath but merely wish to make a "statement." The "statement" usually turns out to be a highly dramatic appeal to the prejudices of the audience which thinks the Commission can and ought to consider it as evidence.

Mark Twain once wisely observed "No one can talk so freely as him who ain't hampered by the facts." My personal view is that the Commission should either force this individual to take the oath and submit himself to cross-examination, or it should announce that the "statement" will be heard but cannot be treated as evidence.

WHAT Kipling said of the marines, "A sort of bloomin' cosmopolite, soldier and sailor too," is true of Public Service Commissions and their work. To this might be added the duties of a baseball umpire.

There can be no question about the legislative intent in creating such Commissions in order to protect the public. Yet knowing the constitutional rights of all citizens and corporations, the legislatures of the various states have properly, in most cases, limited the jurisdiction of the Commissions and the courts, through a long line of decisions, have rather definitely stated what the extent of the Commissions' power is.

Commissions of this nature are created by the legislature and an inquiry or investigation on its own motion by a State Commission is like any other legislative investigation. It is the duty of the Commission to employ an adequate staff, if its appropriation will allow it, to secure evidence to

protect the unorganized public. (Except as to motor bus and truck regulation, my Commission cannot complain of an inadequate appropriation up to this time.)

Criticism invariably arises when Commissions say anything about their work being of a quasijudicial nature. The truth is that Public Service Commissions do a certain amount of work in each of the three great branches of government, and only those who are thoroughly familiar with the law are capable of distinguishing the line of demarcation in the Commission's work.

WHEN the Commission is investigating and securing evidence concerning valuation, operating expenses, or reasonableness of rates of public service corporations, it is acting in a legislative or representative capacity and the public has a right to expect protection from the Commission in this capacity.

When once the Commission's staff, however, has gathered this information, the Commission must mount the bench and put its own staff under oath and allow these witnesses to be cross-examined by the utilities and by any outside representative of the public. The members of the Commission are then acting in a judicial capacity according to a long line of court and interstate commerce decisions.

"The liberality of the rules for admission of evidence before a regulatory Commission is all the more reason why the evidence should be adhered to after it is admitted." *

* Interstate Commerce Commission *v.* Louisville & N. R. Co. 227 U. S. 88, 57 L. ed. 431, 33 Sup. Ct. Rep. 185; Railroad Commission *v.* Louisville & N. R. Co. 197 Ala. 161, P.U.R.1916F, 356, 72 So. 397.

Manifestly it is absurd to contend that the Commission can act at the same time in the dual role of judge and prosecutor, and if the Commission attempts the impossible the resultant order is reversed in court. This avails the ratepayer nothing and costs the taxpayer money. But, mark you, it sells more newspapers of the sensational type. This fact accounts for a great deal of the criticism of those Commissions which weigh evidence carefully and endeavor to word their orders so that they successfully withstand court review.

A RADICAL Commission is easy prey for a certain type of public service corporation that seeks undue advantages, and it also retards development of utility service by right-minded public utilities; although these utilities, too, are well aware of their legal rights, they do not care to spend money in litigation and thus add another burden on the ratepayer. When a utility or transportation company fails to comply with an order of the Commission, it then becomes the duty of the Commission to report this fact to the executive officers of the state and to co-operate with them in enforcing the law. The Commission is then, to a limited extent, functioning in an executive capacity; hence it may be safely stated that such a Commission is a part of the three great branches of the government. In my own state there is no penalty in the Public Utility Act and no right of appeal from an order of the Commission, so far as the public is concerned, in the Transportation Act.

A SUBSTANTIAL part of the public believes its interest to be di-

"The most common fallacy concerning State Commissions is that letters, petitions and verbal statements made in private conversation can and should be treated as evidence in formal docketed cases."

ametrically opposed to that of the utility in cases before the Commission; this is true in valuation cases or when the Commission is engaged in checking the operating expenses of the utility, but it is not true when the Commission has before it a revision of the utility's rates—especially if its existing schedule is full of inequalities. The issue then is squarely between the various classes of customers as to who shall stand the burden if an increase is necessary or who shall get the lion's share if a reduction is in order.

The only interest the utility has at this stage, especially in case of reduction, is the right to expect the Commission to give it a rate which will not hamper production, and in increased production, (brought about partly through equitable and scientific rate making), lies the principal hope of an eventual reduction for all classes of customers.

Mass production is well understood in the utility world; most of the gas and electric utilities are anxious to secure rates which will increase the use of their commodities.

"A possible or probable increase in business from a reduction in rates may be an element of consideration" (promotional element).*

The trouble is that the uninformed want the Commissions to order a horizontal reduction of the existing inequitable rate; a reduction to all classes sounds good to a politician who forgets that this only accentuates the inequalities. Once an equitable rate has been ordered into effect and the state or community is in a healthy condition, it is only a matter of letting the rate work a few years and then the politician's wish is fulfilled.

This has been proven before my own Commission in the Montgomery gas rate case. After five years under a scientific rate, the utility's sales almost doubled; its revenues in 1927 when submitted to the Utilities Commission in May 1928, justified the Commission in issuing a citation to show cause why its gas rates should not be revised. At the hearing the only real evidence from the standpoint of the consumer's interest was submitted by the Engineering Department of the Commission and the Commission's order put into effect a saving of $6.60 a year for each gas consumer of the utility.

AMONG the residential customers of a public utility it is the average regular customer who makes it possible for all of us to receive utility service.

This is true also as to the passenger department of the railroad companies. Most utilities understand this principle, as is evidenced by the sale of street-car tickets at reduced rates and by the effort to establish gas and elec-

*Railroad Commission *v.* Cumberland Teleph. & Teleg. Co. 212 U. S. 414, 53 L. ed. 577, 29 Sup. Ct. Rep. 357.

tric lighting rates, which are reduced as the amount of the commodity used increases. The railroads of America have lost a large amount of revenue in their passenger departments by stubbornly refusing to recognize this principle in the sale of mileage books at reduced prices.

Every substantial shipper of freight ought to recognize that he has a vital interest in seeing that another class of shippers is not given an unduly low rate. This is true also among the customers of public utilities which are engaged in the sale of gas, electricity, and water. Minorities represented by those unfamiliar with the principle here outlined are sometimes responsible for the failure of the majority of customers to receive as reasonable rates as they should.

IF the American people are averse to the creation of a Federal Commission for the regulation of services and rates of their local utilities, and yet want the fullest protection from their state officials, they must take steps to remove their State Commissions from domination and attempted intimidation by legislative and executive branches of the state government.

Necessarily some control should be left with the legislative branches concerning appropriations, and the executive department should probably continue to have the right to approve or disapprove the expenditures of the Commissions. The attempts at domination, however, can be prevented by making the Commissioners constitutional officers.

Threats by Governors to abolish Commissions which refuse to approve appointments to their staffs of political pets of the executive department are not unheard of. Neither is it unusual to hear talk of abolishment when some reactionary or radical has conceived a dislike for the policy of the Commission. Attempts at intimidation concerning cases before the Commission are not entirely unknown. The legislative mind is one thing and the judicial mind is quite another and "never the twain shall meet." Caught between these forces it is a wonder to me that the State Commissions have made as good a record as President Hoover accords them. They could make a better one if they were made constitutional officers.

Science and art certainly meet on the field of battle in a hearing before a Commission. Politics is an art—I sometimes think one of the black arts —and not only regulation of rates but all government is a matter of science. Imagination rules art, truth rules science. What a certain type of political orator has cost my section only the recording angel knows. What a yellow press can do in impeding the progress of one of the richest of American states will soon be ascertained here on earth.

ANOTHER factor which confuses the public is a general lack of knowledge of the fact that public utilities and transportation companies may voluntarily put into effect services and rates which the Commission could not order into effect on any evidence that is possible for it to secure.

So far as the utilities are concerned, a reasonable latitude must be given them for meeting competition between their products and those sold by un-

regulated competitors. The price of steam coal has a bearing on power rates just as water and truck competition have a bearing on railroad freight rates. So long as it is not shown that by meeting this competition the public service corporation is compelled to add something to the revenue derived in other territories or by other classes of customers, this right to meet competition should be freely granted.

LOCAL pride within reasonable bounds is a very fine asset to a community but it sometimes attempts to express itself by unreasonable demands.

For instance, local pride wants local passenger trains to continue to serve it, even though the revenue statements of the railroads, (and even a casual eye-witness can see this), show that the public has almost abandoned this form of transportation. The continuance of such trains means, of course, an added burden on the freight payers of not only that community but throughout the state and section that is served by the railroad.

Queerly enough, just at the time when a revolution in transportation is going on in this country by the increased use of privately-owned automobiles and public busses, and the consequent falling off in the passenger revenues of the railroad companies, local pride seeks to have the railroad companies build expensive and ornate passenger depots. A passenger depot case always means a well attended public hearing, although a revision of freight rates of primary importance to the development of a city or town goes unnoticed except by the comparatively few.

AT the present time there are two situations in Alabama which are perhaps unique in America. That they are unique is my excuse for mentioning them.

One situation involves an investment of more than $150,000,000 of the government's money at Muscle Shoals, and the effect it has on public opinion and on Congress about this particular State Commission's work. More than once my Commission has been the target of unfair and unjust criticism on the floor of the United States Senate, usually by those known to be government-ownership advocates of all utilities.

The fact that the government has been selling this power to a utility at two mills per kilowatt hour under a contract voidable on thirty days' notice has no bearing on the rates prescribed by our Commission, which must have some element of permanency. It could not be considered as material evidence upon which to base a reduction in rates unless the contract had more stability than it has. All reference to the cost of transmitting and distributing of this electricity is carefully deleted from radical newspapers and by orators in the Senate.

A half-truth is often more deadly than an outright falsehood. The storm of battle between government ownership advocates and those opposing them has broken over our devoted and luckless heads. The fact that Alabama today has the lowest statewide rates in America for the use of electricity in the home has probably escaped our Congressional critics.

THE other situation centers about the presence in Alabama of one

particular set of newspapers which I consider among the most untruthful in America. It is impossible for this Commission to issue an order which they do not promptly revile and immediately set about confusing in the minds of their readers. One can hardly imagine any other set of newspapers in America for claiming credit on the front page of the paper for a reduction in electric light rates ordered into effect by the Commission and criticizing the Commission for the order on its editorial page!

Newspaper criticism of a rate order by a Commission is not unusual, but to deliberately carry false information concerning a utility rate containing an optional feature is perhaps without parallel anywhere in America. The order just referred to is the only one of its kind I know of in effect for state-wide application in the United States. We have driven our enemies out of America and into Canada for rate comparisons; if they will only put the Canadian power rates in evidence along with the lighting rates they will then have to proceed on into the dark and dreary wastes around the North Pole for further comparison. Perhaps there they may find some Eskimo who has learned to catch electricity from the aurora borealis and carry it around in a bucket for door delivery at lower rates than these incompetent Commissions will give the down-trodden people.

In the meantime, however, the American people, by giving the brains, the nerve, and the money of the American business man free rein in developing our vast natural resources and by entrusting his regulation to State Commissions, have had provided for their comfort the finest utility service in the world—and at the lowest rates.

The Sphere of Influence of a Public Utility Employee

IF a trainman is grouchy in the morning he passes the grouch on to the men and women who go into the factories, the mills, the shops, the schools, the offices or the store. He spoils their day. They pass on the grouch they have gotten from you to the people with whom they come in contact. If the trainman passes his grouch on to the returning passengers at night they pass it to the home circle.

If you are cheerful and happy you will better the work and lives of all these people you transport and all of the people with whom they come in contact.

Nobody made us engage in this work, nobody keeps us in it against our will. If we don't like it, let's get out of it. If we stay in it, let's be happy about it.

—P. S. ARKWRIGHT,
PRESIDENT, GEORGIA POWER COMPANY

Remarkable Remarks

HEYWOOD BROUN
Columnist.

"The state of Kansas once possessed a law forbidding any railroad train to run within its borders unless the president of the road or some other member of the board of directors traveled on the cowcatcher."

WILLIAM W. BRUSH
Deputy Chief Engineer, Department of Water Supply, New York City.

"There is no more certain index of business conditions and living standards in large cities than per capita daily consumption of water."

MATTHEW S. SLOAN
President, New York Edison Company.

"A starved utility is the worst possible servant a community can keep, a drag on the progress and welfare of the city and its people."

LOUIS L. EMMERSON
Governor of Illinois.

"It was not until the establishment of public utility regulation that an understanding between the utilities and the public began to grow up."

EARLE H. MORRIS
Chief Engineer, Board of Railroad Commissioners, North Dakota.

"We believe that not to exceed 5 per cent of the so-called service problems have any excuse for reaching us."

PAUL S. CLAPP
Managing Director, National Electric Light Association.

"Water is looked upon as one of the country's largest undeveloped resources. Out of 55 million potential water horsepower, 12 million is developed."

TOM P. WALKER
Vice-president, Virginia Electric & Power Co., Richmond, Va.

"For many years, we have of necessity allowed our equipment to become wholly out of date. No thoughtful person could imagine that we can compete with the present luxurious and convenient type of transportation which the automobile affords, using as we do, in most cases, a vehicle which twenty years ago was only 'pretty good.'"

Opinion of the Tennessee Commission, in valuation proceedings of the Nashville Railway & Light Co.

"The Commission has undoubtedly the authority to establish street car fares, but on the other hand it has no jurisdiction to compel the public to ride."

A writer for the High Point (N. C.) "Enterprise."

"Other things being equal, industry gravitates to the field of adequate utility service."

ROGER W. BABSON
Statistician and economist.

"Electric service is one of the very few items in the cost of living that is lower than it was before the war."

MRS. DOROTHY H. VAN ERT
General Traffic Supervisor, Illinois Telephone Association.

"People, rightly or wrongly, will judge the company and its service by their contacts with that company."

REV. WOFFORD C. TIMMONS
Congregational minister of St. Louis.

"The age-old search of man for power has always been characterized by a spirit that is romantic. . . . What you are giving today through your public service utilities is the result of a long process of poetical discovery and romantic evolution."

GIFFORD PINCHOT
Ex-Governor of Pennsylvania.

"We are face to face with the decision whether we shall control the electric monopoly or whether it shall control us. This is a free country, but no country can stay free which allows its Government to be controlled not for the good of the people, but for the purpose of making money."

MERLE THORPE
Editor, "The Nation's Business."

"An executive is anybody who can give an order to anybody else."

EDWARD N. HURLEY
Formerly Chairman of the Federal Trade Commission.

"Once upon a time mere size was taken as conclusive evidence of wrong-doing. If a company was big, it had to be bad. If, in addition to being big, it made big profits, then it was awful. But the public has rejected both those views."

JOHN G. JOHNSON
Legal advisor of E. H. Harriman; (an answer for which he charged $100,000 to a query about a proposed merger).

"Merger possible. Conviction certain."

HENRY FORD
Automobile manufacturer.

"From all angles, I would say that the grouping of electric utilities is logical for the economies it achieves and it is desirable for the good of the Nation. I look forward to the not distant date when the whole land will be woven into an economic unity by the transmission and distribution lines of electricity systems."

THE NEW ADMINISTRATIVE PROBLEMS OF SUPER-POWER

What can and should be done about the holding company? This question, which is becoming of great importance, was answered on March 20th at Yale University by O. C. MERRILL, *Executive Secretary of the Federal Power Commission, in clear and temperate terms; his talk is here published almost in its entirety.*—EDITOR.

THE question whether ratepayers of operating utility companies are likely to be injured or benefited by holding company management is one of great concern at the present time.

Certain students of economic problems have expressed fear as to the effect on the public of the continued consolidations and progress in the electric field, as well as in other lines of business. Are these apprehensions justified, or are those who oppose this trend like Dame Partington; merely attempting to sweep back a tide on the shores of economics which cannot be stayed? Mr. Merrill said:

WHEN in 1902 the Bureau of the Census made its first report on "Central Electric Stations," that is, plants supplying electric power for general public service, these stations had an installation of 1,685,000 horse power; an investment of $483,000,000; an annual output of 2,500,000,000 kilowatt hours; and annual revenues of $80,000,000. By 1928 these items had increased, on the average, more than 24 times and had become: installation, 39,750,000 horse power; investment, $10,300,000,000; annual output, 83,100,000,000 kilowatt hours; and annual revenues, $1,900,000,000. More significant still is the fact that there had been on the average as great an increase in the six years from 1922 to 1928 as in the twenty years from 1902 to 1922. The increase in the number of operating stations, on the other hand, was only 45 per cent in the twenty-six years, and there was an actual decrease in number between 1922 and 1928.

THE rapid physical growth of the industry, and its integration into constantly larger physical systems, has been accompanied by a still more rapid consolidation of control through the medium of the holding company, such control being effected through acquisition of properties or of voting stock, or through leases or management contracts.

The Federal Trade Commission in the studies which accompanied its report of 1927 on "Control of Power Companies," found that whether measured by installation, output or earnings, holding companies in 1924 controlled more than 75 per cent of the electric power industry, and that more than four-fifths of the total was controlled by eight groups. The two major groups, Electric Bond & Share Company and the Insull interests, together controlled 21 per cent of the total electric power output of the United States. This was four years ago. Acquisition of control has been

going on ever since at a rapid rate. The *Electrical World* of January 5, 1929, reported that during 1928, 80 major holding companies had acquired more than 800 operating companies and 55 minor holding companies. Of these operating companies, 65 were acquired by the Electric Bond & Share interests, and 139 by the Insull interests, while the latter acquired in addition twelve smaller holding companies.

This practice of consolidation of control has both its advantages and its dangers. It may afford to the operating companies a higher degree of technical advice and supervision, it may effect economies by large scale buying, it may distribute financial risk, and it may provide a readier market and a better price for securities. There can be little doubt that, on the whole, the holding companies' control and management of the operating companies has improved the service and reduced the costs of the operating companies. To what extent, however, these reduced costs have been offset by charges collected by the holding companies, or have been reflected in reduced rates to consumers as compared with enhanced profits to the holding companies, are questions which admit of some doubt.

MR. Merrill states that there can be little doubt on the whole that holding company control and management have improved the service and reduced the costs of the operating companies; but to what extent these reduced costs have been offset by charges collected by the holding companies, or have been reflected by reduced rates to consumers as compared with the enhanced profits to the holding companies, are questions, he declares, which admit of some doubt.

Whether holding company management is beneficial or detrimental to the ratepayers' operating companies ought not, however, at this time to be a matter of doubt.

Does the ratepayer get better service? Are his rates higher or lower than they were before holding company control? If the service is no better than it was before and the rates are no higher, the ratepayer, at least, has not been injured. If the service is better without change of rates, the ratepayer has been benefited. If the service is improved and the rates have been decreased, holding company management has been good for the ratepayer no matter what the profits of the holding company may have been.

WE have in this country drawn a sharp distinction between private business and business which is "affected with the public interest." For the former we hold to the principle of competition as affording the primary corrective for inadequate quality or for undue price. To the latter we accord monopoly privileges and we exact in return public supervision and regulation as a corrective for inadequate service or for unreasonable rates.

With respect to the operating companies, there is no longer any question that their activities are affected with the public interest and are subject to the supervisory and regulatory jurisdiction of the states or of the Federal Government according as such activities are intrastate or interstate. That the holding companies are likewise subject to such jurisdiction, or that the control and management of operating companies in one state by a holding company domiciled in another state constitutes interstate commerce of such a character as to give jurisdiction to the Federal Government under the commerce clause of the Constitution, has been challenged. To determine whether, how,

and to what extent the holding company should be subjected to public regulation; and, in general, to provide for the creation and maintenance of public agencies and the grant to them of such powers as will make it practicable to protect the public against inadequate service, unreasonable rates, and unsafe investments, without hampering the sound expansion of one of our most essential public services, is the administrative problem that super-power has placed upon us. Furthermore, since the exercise of supervision over and regulation of electric utilities is a function both of the states and of the Federal Government, a part of our administrative problem consists in marking out the areas in which these jurisdictions are distinct, and in correlating them where they overlap.

FRANCHISES are ordinarily a matter of local municipal law. Certificates of convenience and necessity authorizing business to be initiated or extended are, where required at all, granted solely by the states. All these apply to power development regardless of source of energy. When water-power development is involved, permits or licenses to use public waters, where required, are granted by the state. If the development involves the use of public lands or reservations of the United States, or the structure will be erected in or over navigable or international waters, a license must be secured under the provisions of the Federal Water Power Act. This act also gives to the Commission authority to supervise the design, maintenance, and operation of power projects; and the Commission is required to see that the plans adopted will provide for a comprehensive scheme of improvement for all beneficial public uses. This applies, however, only to its licensees. All other water-power projects are subject to the sole jurisdiction of the states; but there are few state laws which grant like authority to state agencies, or which make any attempt to exercise control over the use of the waters of the state for power purposes. This is a serious lack from the standpoint both of ability to co-operate with Federal agencies and to safeguard in other respects the public interest in these important natural resources of the states.

THE regulation of electric utilities operating in intrastate commerce is a function of the state, and except with respect to licensees of the Federal Power Commission in cases where no state agency has been given authority, it is an exclusive function of the states.

In view of the claim so often made, that the states are thoroughly able to act in all matter affecting the electric power industry, including interstate commerce in electric energy and the operations of the interstate holding companies, it may be of interest to inquire into the extent of the authority which state Public Service Commissions in fact now possess.

Of the forty-eight states, one, (Delaware), has no Commission at all, and, therefore, exercises no regulation over electric utilities.

The Commissions of seven other states, Florida, Iowa, Kentucky, Minnesota, Mississippi, South Dakota, and Texas, have no jurisdiction over either the rates or the services of such utilities.

Sixteen states have no provision for the maintenance of systems of accounting. Twenty-three require no certificate of convenience and necessity for the initiation or extension of service. Twenty-six do not require approval of changes in contracts and have no control over capitalization or security issues. Twenty-seven do not require approval of consolidations or mergers; and twenty-eight, of leases.*

* Data from "A Survey of State Laws on Public Utility Regulation in the United States," Bonbright & Company, December 1, 1928.

We are, therefore, a long way yet from effective control even in intrastate matters, and even if we judge such control only on the basis of powers possessed by state regulating agencies and give no consideration to the character of their exercise.

By far the greater part of electric utility service will always be intrastate. There is no other practicable method of regulating such service than through the medium of State Commissions. It is, therefore, of primary importance that every effort be made to support state regulation and to make it both comprehensive and effective. In many instances, it is neither today. One of the chief problems in the field of regulation is to secure new state legislation or to amend existing legislation so as to provide:

First, for Commissions of thoroughly competent individuals free from political interference;

Second, for adequate staffs and for appropriations sufficient to enable the Commissions to perform their functions; and

Third, for complete jurisdiction over the activities of operating electric utilities.

Of course, we might meet the situation by turning from the field of regulation altogether and might start out on a program of public ownership, with or without public operation. Undeniably this is an alternative which is open, if obstacles placed in the way of effective regulation by the utilities, by the courts, or otherwise, shall make the cost of electric service under regulated private monopoly materially greater than the cost at which the public could provide such services by its own direct agencies. But it will be the part of wisdom to perfect the instrumentalities we now have and to give them a real opportunity to prove their worth before rejecting them and substituting something entirely different.

Let us next turn to the field of interstate commerce; that is, interstate transmission and sale of electric energy.

It is frequently said that this is a matter of no consequence, that less than 10 per cent of power generated enters into interstate commerce, and that in any event it is a matter that the states can handle either individually or jointly. While a report of the Bureau of Business Research of Harvard University, upon which reliance is placed, showed that in 1926 only 9 per cent of the total power generated in the United States entered into interstate commerce, nevertheless particular states made a very different showing. The percentage of generated power exported from South Carolina was 31 per cent, from Georgia 38 per cent, from West Virginia 43 per cent, from Iowa 48 per cent, from Idaho 63 per cent, and from Vermont 94 per cent. The per cent of imported power to power generated within the state was 40 per cent in Kentucky, 75 per cent in Maryland, 98 per cent in Mississippi, 116 per cent in Missouri, 121 per cent in Utah, and 126 per cent in Nevada. With increasing interconnections, these interstate exchanges are bound to increase. Furthermore, their importance in individual cases is not to be measured by ratios for the United States as a whole.

Fundamentally, since these transactions are interstate commerce, the authority over them is Federal. The United States Supreme Court declared, however, in the case of Pennsylvania Gas Co. *v.* Public Service Commission of New York* that

*252 U. S. 23, 64 L. ed. 434, P.U.R.1920E, 18, 40 Sup. Ct. Rep. 279. The particular circumstances involved in this case and the conclusions reached were discussed by the Supreme Court in the Attleboro case (273 U. S. 83, 71 L. ed. 549, P.U.R.1927B, 348, 47 Sup. Ct. Rep. 294) in the following language: "In the Pennsylvania Gas Company case, the company transmitted natural gas by a main pipe line from the source of supply in Pennsylvania to a point of distribution in a city

pending assumption of control by Congress, and if no burdens were thereby laid on interstate commerce, a state might regulate the rates at which a public service corporation delivered to customers within its borders gas which it had brought into the state from an outside source, and with respect to which there was no change in ownership prior to delivery to the consumer. It is hardly to be doubted that the ruling in this case would be applied to the importation of electric energy under like circumstances and with like effect. In interstate commerce of this character, therefore, the Federal Government, in the future as it has in the past, may, if it so chooses, stand aside and allow the states to regulate.

THERE is another class of interstate energy exchange which has a different character, where a distributing corporation purchases electric energy wholesale from a corporation of another state for subsequent distribution and sale in the receiving state. Control over transactions of this character, the Supreme Court said in the Attleboro case,* rests solely in the Federal Government, and neither the state into which, nor the state from which, electric energy is so transmitted has any jurisdiction over the matter at all.

It has sometimes been claimed that interstate commerce of this character can be indirectly regulated by the receiving state, at least so far as rates are concerned, simply by ignoring the purchase price when fixing resale rates; or, if this proposal should prove to be illegal, then that the two states, or any group of states, could acquire jurisdiction over such interstate commerce through the medium of interstate compacts.

THE proposal that states by compact may regulate interstate transactions of electric utilities has been so often advanced that it merits more than passing reference. The so-called "compact clause" of the Constitution provides that "no state shall, without the consent of Congress . . . enter into any agreement or compact with another state, or with a foreign power." The Supreme Court of the United States has said † that the prohibition in the Constitution of agreements and compacts between states "is directed to the formation of any combination . . . which may encroach upon or interfere with the just supremacy of the United States," and that it embraces any form of stipulation, written or verbal, which might tend to "interfere with their,"—that is, the United States'—"rightful management of particular subjects placed under their entire control."

By "the commerce clause" of the Constitution, the power to regulate interstate commerce is placed in the entire control of the United States. If Congress could through approval of compacts between states divest itself of any part of its exclusive jurisdiction over interstate commerce, it

in New York, which it there subdivided and sold at retail to local consumers supplied from the main by pipes laid through the streets of the city. In holding that the New York Public Service Commission might regulate the rate charged to these consumers, the court said that while a state may not 'directly' regulate or burden interstate commerce, it may in some instances, until the subject-matter is regulated by Congress, pass laws 'indirectly' affecting such commerce, when needed to protect or regulate matters of local interest; that the thing which the New York Commission had undertaken to regulate, while part of an interstate transmission, was 'local in its nature,' pertaining to the furnishing of gas to local consumers and the service rendered to them was 'essential local,' being similar to that of a local plant furnishing gas to consumers in a city; and that such 'local service' was not of the character which required general and uniform regulation of rates by congressional action, even if the local rates might 'affect' the interstate business of the company."

* Public Utilities Commission *v.* Attleboro Steam & Electric Co. (273 U. S. 83, 71 L. ed. 549, P.U.R.1927B, 348, 47 Sup. Ct. Rep. 294).

† Virginia *v.* Tennessee (148 U. S. 503, 37 L. ed. 537, 13 Sup. Ct. Rep. 728).

could divest itself of all of it. If it could do so with respect to interstate commerce, it could do likewise with respect to any other of its delegated powers, and could by its own legislative acts accomplish fundamental changes in the Constitution.

It may, therefore, well be doubted whether the compact clause can be construed as conferring upon Congress the power by mere legislation to give back to the states either in whole, or in part, any of those specific powers, which by the terms of the Constitution were taken from the states and conferred exclusively on the Federal Government. But even if this could be done, and compacts were in fact made and ratified, a method of regulation which depends upon the unanimous consent of the compacting states would be cumbersome and could hardly hope to be effective.

WHILE Congress has made ample provision for the regulation of certain other interstate utilities, the only provision which it has made for regulation of interstate commerce in electric energy is that contained in § 20 of the Federal Water Power Act, where jurisdiction over rates, services and securities of corporations engaged in such commerce is conferred upon the Federal Power Commission.

This jurisdiction extends, however, only over licensees of the Commission, their subsidiaries and customers, and is further limited to those cases where the states directly concerned have not provided a Commission or other authority for such regulation, "or such states are unable to agree through their properly constituted authorities." Where the interstate transactions are of a wholesale character, as in the Attleboro case, the Commission's jurisdiction is exclusive, for it has been held * that there are no existing agreements between states which would limit the Commission's authority. Where the interstate transactions involve importation without change of ownership, as in the Pennsylvania Gas Company case, it has been held * that the Commission has no jurisdiction, except where a state has no Commission with regulatory authority over electric utilities.

THE jurisdiction of the Commission may be invoked "upon complaint of any person aggrieved," or "upon the request of any state concerned;" or the Commission may act upon its own initiative. The Commission has held that the filing of any such complaint or request makes the exercise of its jurisdiction mandatory.* No complaint has yet been filed; and the Commission has so far acted on its own initiative only in the Conowingo case where, in co-operation with the states of Maryland and Pennsylvania, the character and amount of securities to be issued was determined, and the price at which the power was to be sold at the state line was indirectly fixed in certain intercompany contracts which were concurrently approved by the three Commissions.

The cases of wholesale interstate energy transfers to which the Federal Water Power Act applies are, of course, only a very small proportion of the aggregate of such transfers. Over all the rest there is no existing agency, state or Federal, with power to act. There is here a wide gap in the field of regulation which should be filled, and none but a Federal agency has jurisdiction to fill it. On the other hand, there are sound objections to imposing upon, or placing in the hands of, a Federal agency located in Washington the obligation of regulating scores of individual cases of wholesale interstate energy transfers in all parts of the United States. Is there any practical way out of this dilemna? If Congress cannot grant away its jurisdiction

* Unpublished decision of the Commission of February 28, 1929.

over interstate commerce, it might, nevertheless, authorize the state Commissions to act as its agents within certain limits. The Federal Power Commission in its latest annual report put forward the suggestion that Congress do this very thing, that it leave wholly to the states those cases of importation where the interests of interstate commerce are not directly affected, and that, in other cases it authorize state Commissions, sitting jointly, to act for it in preliminary proceedings, to hold hearings, take testimony, assemble evidence, and make the original findings, leaving to a Federal agency final jurisdiction in cases of disagreement, or of appeal, and retaining in such Federal agency original jurisdiction if the states fail to act.

State agencies are more familiar with local conditions than any Federal agency is likely to be. Furthermore, since under such a plan, the Federal agency would have, in general, only what would correspond to appellate jurisdiction, it could render its decisions on the record made by the states without the necessity of taking new testimony or admitting new evidence. With respect to these suggestions, the Commission said:

> "A procedure of this character would leave the final authority in cases involving more than one state where it properly belongs, in the hands of the Federal Government; would give to individual states the right to settle their own local problems; would give to two or more states the opportunity of adjusting their own differences; and would avoid the necessity of overloading Federal agencies with details, or with matters that the states had better decide for themselves." *

MR. Merrill discusses the problem of the regulation of holding companies and is of the opinion that there would be no difficulty about it at all if the activities of the holding companies were confined to single states. But it is immaterial whether holding company operations are intrastate or interstate, so far as the fundamental power to regulate is concerned. If a holding company is not, in fact, a public utility company, it cannot be regulated to the extent its operating companies can be. Some holding companies, undoubtedly, do confine their activities to a single state; but that does not mean that their charges for service may be regulated, no matter how desirable it might be to regulate them.

Two very important legal questions bear upon the problem of the regulation of holding companies. The first is, are holding companies public utilities? The second is, assuming that they are public utilities, are holding companies engaged in interstate commerce?

If holding companies are public utilities and they are engaged in interstate commerce, the Federal government has the power to regulate them to the exclusion of the state authorities so far as their interstate operations are concerned. Mr. Merrill continues:

> WHEN we come to the proposition of regulating the holding company, which is at present the outstanding factor in the electric power industry, we have no experience to serve as a guide. These companies have not yet been subject to any regulation, state or Federal, and the question arises whether their operations are of such a character that they can be said to be "affected with the public interest," and whether their activities as managers of operating companies in different states, and their issuance of and trading in securities constitute interstate commerce. The answer which is frequently made, that these also are matters of no consequence, that the public as users of

* Eighth Annual Report, p. 13.

power deal only with the operating company, and that, since the rates and services of the operating company are regulated, the consumer, as such, is not interested in or affected by what the holding company may do, is by no means convincing.

If it were to be held that the charges which a holding company may impose upon a subsidiary operating company, and which may add materially to its capital investment or its operating costs, are solely the concern of the contracting parties; that the control which the holding company through stock ownership may impose upon the policies and management of the operating company is subject to no public supervision or restraint; that holding companies may acquire the stocks of operating companies and may pledge such stocks as collateral for security issues of their own, and may repeat and pyramid the process, regardless of the effect upon the credit of the operating company and without being answerable therefor to any public authority; it is apparent that an important and controlling element in the electric power industry would have escaped public regulation, and that investors in their securities would be left to the mercy of speculators with no protection save such as might be afforded by "blue sky" laws.

THE primary object of this rapid growth of the holding company movement is, of course, profits for these companies. To this, within reasonable limits, there is no valid objection. Profit is the motive for all business undertakings; but when the undertaking is a public utility, or affects a public utility, then the means by which the profits are acquired, the extent of such profits, and the distribution of the gains of improved operations, become a matter of public concern. If the pyramiding of securities so as to concentrate all the profits of a group of companies for the benefit of a limited investment at the top, thus creating a speculative financial structure safe only in fair weather, may jeopardize not only the credit of the operating company but the interests of security holders, such action also becomes a matter of public concern.

No reliance can be placed on competition as a corrective of abuses. Holding companies may compete actively for acquisition of new properties, just as do operating companies for extensions of service into new territory; but competition for new territory is subject to regulation, while acquisition of new properties generally is not; and the very fact of the keenness of the competition, forcing the payment of excessive prices for the new properties, is adverse to the public interest, for these excessive prices are bound to be reflected in the rate base, and in the prices which the consumer must pay.

WERE these activities confined to the limits of a single state, they could with little doubt be brought under the regulatory control of the state; but they are not so confined. It may be that where the operating companies are wholly intrastate, the state can control the character of the service or management contracts and the charges made thereunder. But even here, unless the holding company is likewise a corporation of the same state, no means would be available for compelling the presentation of evidence upon which to determine the reasonableness of the contract terms. Presumably also the state in which the holding company is incorporated could control the issuance of its securities, through its grant of charter rights, if not otherwise; but holding companies like other corporations are prone to incorporate in states with lax corporation laws, and we have have been regaled with the spectacle in recent years of states bidding for this business by outdoing each other in the lack of restraint which they place upon the corporations which they create.

At the best, and leaving to the states all that they have jurisdiction to handle, the greater part of the activities of holding companies are beyond the legal reach of the individual states.

WE must then ask, do these activities constitute interstate commerce within the meaning of the commerce clause of the Constitution?

The question appears not yet to have been directly answered by the courts with respect to electric power holding companies, although it soon may be in the case now pending between the Federal Trade Commission and officials of Electric Bond & Share Company. Similar situations have, however, been the subject of decisions of the courts. . . .

THE courts have held that the the shipment and sales of stocks and bonds between the states constitute interstate commerce; * and companies holding the stock of other corporations engaged in interstate commerce have been held subject to dissolution or prosecution under the commerce clause.† Charges of the character made by the holding companies upon the operating companies manifestly may be of such amount as to place a burden upon interstate commerce; and it has been held that the power to regulate interstate commerce extends to every person, corporation, instrumentality, act, or practice which may burden or restrain such commerce.

Under all the circumstances of the business which they carry on, it is hardly to be doubted that the holding companies are engaged in interstate commerce, and that they are, therefore, subject to regulation to such extent and by such agencies as Congress may direct. Congress has, however, taken no action toward regulating the interstate activities of the holding companies, and, except to the very limited degree provided by the Federal Water Power Act, none toward regulating the interstate energy deliveries of the operating companies. Both should be undertaken before the situation has developed to a point where the correction of evils that may have arisen might require such drastic remedies as seriously to injure the industry as a whole and to bring the entire holding company movement, regardless of its benefits, into disrepute.

WE have on our statute books laws of a different character than those we have here been discussing. They are known as Anti-Trust Laws.

The Clayton Act, for example, prohibits the acquisition by one corporation engaged in interstate commerce of the stock of another corporation also engaged in such commerce, or the acquisition by a holding company of the stock of two or more corporations engaged in interstate commerce, where the effect may be substantially to lessen competition between the corporations or to restrain trade in any section or community, or to tend to create a monopoly. It has been our national policy, however, as far as public service corporations are concerned, to proceed in another direction, to permit monopoly and to overlook restraints of trade, trusting to public regulation to give us the benefits of monopoly and to prevent its abuses.

It is earnestly to be hoped that we may be able to apply to this new agency of the holding company the same principles of regulation which, when effectively exercised, have been for the benefit of both the public and the industry. If, however, this is not done, or cannot be done, we have this other remedy in reserve.

* Alabama & N. O. Transp. Co. *v.* Doyle, 210 Fed. 173; Compton Co. *v.* Allen, 216 Fed. 537.

† Northern Securities Co. *v.* United States, 193 U. S. 197, 48 L. ed. 679, 24 Sup. Ct. Rep. 436.

OUT OF THE MAIL BAG

Rate Investigation and the Rise in Stock Values

IN looking over the PUBLIC UTILITIES FORTNIGHTLY of February 21st, I notice under "The March of Events" a reference to the action of the Maryland Commission in ordering an investigation of the rates of this company. The headline "Rate Investigation Follows Stock Rise" seems to me to be rather unfortunate for the reason that it is misleading.

This proposed rate investigation only follows the stock rise in the sense that the rise in the price of stock happened to take place before the rate investigation was ordered. As a matter of fact, the rate investigation has no connection whatever with the stock rise, for this investigation would have been scheduled just as surely if the stocks had fallen.

You are mistaken in your statement "The Commission is expected, as part of the rate inquiry, to investigate the origin and purpose of the recent buying of stock," for the Commission has expressed no such purpose and recently when a new stock issue was authorized, to be offered to shareholders at a very considerable spread below the market price, no question whatever as to the price of the stock or the market was raised in the hearing before the Commission. If the Commission had any intention of investigating the stock market conditions, this would have been the natural time to have given some intimation of it.

The scheduled rate investigation is based solely upon the Commission's interpretation of the Maryland Public Service Commission Act, under which the Commission feels that it cannot put into effect a rate order for an indeterminate period. The present rates were ordered as of January 1, 1927, to remain in effect for two and one-half years, expiring June 30, 1929. Should the Commission fail to renew or modify its expiring order, it would have no control over the rates thereafter except by suspending rates initiated by the company. The Commission has introduced a bill in the state legislature at present in session to amend the Public Service Law to definitely give the Commission power to prescribe rates for an indefinite period.

In other words, the rate investigation order was made entirely without reference to the question as to whether existing rates might be too high or too low and altogether without reference to the market price of the company's stock, these two factors having no bearing whatever as to a basis for the order.

—HERBERT A. WAGNER,
President, Consolidated Gas, Electric Light and Power Company of Baltimore.

A Million Dollars a Year Saved to Ratepayers in Nevada

I THINK your answer to the New York *World* article is fine. . . . This Commission has been in existence since 1907, when it was created as the Railroad Commission of Nevada; then it was given jurisdiction over public utilities in 1911, and finally the act was rewritten in 1919 as the Public Service Commission of Nevada. Over this period of time the reductions which the Commission has secured for the people of Nevada in the matter of reduced railroad rates, fares, express rates, electric light and power rates, gas rates, water rates, both domestic and irrigation, amount to a million dollars per annum.

Included within this estimate is the effort of this Commission, in conjunction with other Western State Commissions, in opposing the 5-per cent increase in rates in Ex parte 87, filed in 1925, and which, if it had been authorized by the Interstate Commerce Commission would have cost the people of our state $250,000 per annum.

—J. F. SHAUGHNESSY,
Chairman, Public Service Commission, Carson City, Nevada.

$4,000,000 Saved to Consumers in the Minnesota Rate Cases Alone

I BELIEVE your compilation of data in "The 'Breakdown' of the Public Service Commissions" fully answers the charges of the New York *World*, and will serve to enlighten that publication as to real facts which it apparently has been without.

I believe the Public Service Commissions in every state in the Union have, so far as was within their power, secured real

results through their activities for the benefit of their citizens, and that they should be encouraged instead of condemned and be given greater powers, in order that their work may be increased in scope and effectiveness.

Certainly no resident of Minnesota feels that this Commission has not properly functioned at all times, or that its continued existence is not essential. Our celebrated Minnesota Rate Cases saved the shippers and passengers in the neighborhood of $4,000,000. Our energetic activity in railroad valuation cases will again show substantial results, we believe, along similar lines. Such work, of course, while more prominent than others of our activities, is only a citation of what this Commission has done, is now doing and will continue to do for its Minnesota citizens.

O. P. B. JACOBSON,
Chairman, Minnesota Railroad & Warehouse Commission.

Why Electric Rates Were Cut in Southern California

I NOTICE that PUBLIC UTILITIES FORTNIGHTLY, in the February 21st issue (page 212), has a short note entitled "Electric Rate War in Southern California." Reading this article (which apparently has the San Francisco *News* for its source of information), one would be led to believe that the Southern Sierras Power Company, the Southern California Edison Company, and the Los Angeles Bureau of Power and Light are involved in a rate-cutting fight. Such a conclusion would be very far from the truth, as the city of San Bernardino, the only locality served by more than one of these utilities, was not affected by the rate reductions.

On the other hand, the reductions made by the Southern Sierras Power Company and Southern California Edison Company reflect changing conditions and came about as the result of conferences between the engineering staff of the Railroad Commission of California and the officials of the companies. The Los Angeles Bureau of Power and Light and Los Angeles Gas & Electric Company (not mentioned in the article), actively compete for business within the city of Los Angeles, and these two systems made concurrent and identical reductions in their rate schedules in accordance with recommendations made by this Commission.

CHARLES GRUNSKY,
Gas & Electric Engineer, Railroad Commission of California.

Voluntary Reductions of Rates by the Utility Companies of Arizona

UP to a few years ago practically all of the larger utility operations in Arizona were in the pioneer stage, but in the last few years, through consolidations, new money and new ideas, the utilities have been placed on a comparatively different plan.

In the year 1924 there were no reductions of record; in 1925 reductions amounting to $15,600,000 were made for the benefit of the consuming public. In 1926, $178,600; in 1927, $28,000; and in 1928, $63,000. There will be more rate reductions in the near future. There have been other reductions in the last year, of which the amount saved to the consumers, at present, is not available. I think it is right and proper at this time to say that after the consolidations of different utilities, many of the reductions have been made voluntarily by the utility companies."

W. D. CLAYPOOL,
Chairman, Corporation Commission of Arizona.

Transporting a Passenger's Baggage Is Not a Freight Service

IN authorizing a motor coach transit company to transport parcels incidental to its passenger service, the California Commission stated: "It is coming to be the accepted practice of stage carriers to limit their undertaking for the transportation of property on passenger stages to packages weighing not more than one hundred pounds each, and when so limited, such a combined passenger and express service would appear ordinarily to meet a distinct transportation need and may be considered noncompetitive with motor truck freight service."

AN INVESTIGATING COMMITTEE REPORTS ON

The Railroad Commission of South Dakota

On March 28, 1929, the legislature of the state of New York passed, by a unanimous vote of both houses, the Thayer-Dunmore bill for creating a Commission of nine members to make a survey of the Public Utility Commission system, and to report its recommendations.

The proposed investigation of the Public Service Commission may be viewed with gratification by the friends and enemies alike of the Commission system of regulation of our public utility enterprises. If the present investigation follows precedent, it will result not only in a wider knowledge on the part of the public of the activities of the Commission, but also in the extension of its authority and possibly even in an addition to the funds it may require in order to function to better advantage.

On two notable occasions similar investigations have been conducted. In both instances the positions of the Commissions were vastly strengthened.

The investigation of the California Railroad Commission, instigated by a hostile legislative Committee, terminated in a commendation of the Commission's work in the highest terms.

More recently the Board of Railroad Commissioners of South Dakota came under the hostile fire of the Governor, who in his annual message to the legislature in January, 1929, recommended that the Commission be abolished.

The Commissioners promptly urged the legislature to appoint an investigating committee; they even went so far as to advise that if "one-fiftieth of what the Governor intimated to be facts were found to be so, the Commission should be abolished."

The investigating committee was duly appointed.

It is difficult to determine definitely the motives underlying this attack, or to give proper weight to the different motives of those who recommended that the attack be made. The Governor is a Democrat, while all other elective state officials, including the three members of the Commission, are Republicans. The investigating Committee was bi-partisan in character, and its report was unanimous.

The Commissioners were in a position to turn over the records of their office, including their decisions as

well as the dockets and decisions of the Interstate Commerce Commission in the various cases in which the State Commission had participated; they also provided the investigating committee with a complete showing of the activities of the Commission and of the results obtained in connection with the regulation of the different businesses over which that body had jurisdiction.

Representatives of many of the leading organizations of the state, as well as the individual shippers who were familiar with the work of the Commission, voluntarily appeared—in practically all cases without even waiting for a request from the investigating committee. The investigating committee invited certain individuals who were believed to be opposed to state regulation, or opposed to the Railroad Commission, to appear; they, however, declined to do so.

The Commissioners refrained from engaging in any newspaper publicity about the matter; they simply rested upon the recommendations made by the Governor, the statement made by him before the investigating committee, and the facts as developed in the sworn testimony.

The Governor's charges against the Commission and the findings as reported to the legislature by the investigating committee, appointed by the State legislature, follow:

The Charges and the Answers

CHARGE NO. 1—*"The purpose for which the Commission was originally created, to prevent the charging of exorbitant rates, has been entirely lost sight of."*

THIS is a serious charge. The legislature, in Chapter 110 of the Session Laws of 1897, did empower the Board to regulate railroad rates, and while not specifically stated in the statute, it has always been assumed that among the most important of the various duties of the Board has been that to prevent the charging of unreasonable, exorbitant or prejudicial rates.

In view of the seriousness of this charge, we have given this feature of the investigation most careful attention. In connection with the investigation, the records, reports and files of the Board have been made accessible to us and in addition, special studies have been prepared and submitted as exhibits indicating the scope of the Board's activities in the matter of investigation, control and prevention of exorbitant rates. Furthermore, the annual reports filed by the Board with the Governor and with this legislature contain a brief summary of the activities of the Board in this connection.

It is impossible, within the scope of this report, to outline in detail the results of our investigation of this matter, but the detailed record and the exhibits filed show most clearly that the Governor has undoubtedly been seriously misinformed on this point. We find that the Board is now, and has for many years been, exceedingly active and aggressive in the matter of the investigation, condemnation and correction of exorbitant rates. In fact, the record shows that the carriers complain most bitterly of what they term the "unwarranted activities" of the Board

along this line. In many instances the Board assumes the initiative and itself initiates investigations of intrastate rates or files complaints with the Interstate Commerce Commission respecting interstate rates without awaiting the filing of formal complaints by shippers or receivers. This is done when its informal investigations indicate the need of corrective measures. . . .

Our investigation further indicates conclusively that the present personnel of the Railroad Commission and its staff are well qualified, and in fact exceptionally so, to handle the many duties devolving upon that organization. . . .

We have looked closely into the work done by the Board in these cases, examining the exhibits, the briefs filed, and their testimony, and are satisfied that instead of being criticized for lack of attention to the important matter of securing reasonable rates, the Board and its organization should be strongly commended for the work done by it.

In summing up our findings regarding this feature of the Governor's message, we are constrained to find that the charge has no foundation in fact, but that on the other hand the Board has in a most laudable manner performed its duties with respect to the control and correction of unlawful intrastate rates and also with respect to the matter of actively challenging unlawful interstate rates and in securing their correction. . . .

CHARGE NO. 2—*"In recent years it seems to have become more and more, not only with the different Railroad Commissions of the various states, but with the national Interstate Commerce Commission, that their first duty was to see to it that invested capital in transportation activities should earn a certain profit on the investment and it seems that rate adjustments have uniformly been made by giving first consideration to the guaranteeing of this profit."*

IN regard to this statement, we deem it sufficient to say that the actual facts as presented clearly demonstrate the unsoundness of the position taken by the Governor and apparently his conclusion was based upon certain gossip heard with reference to the legal status of the matter in so far as rate making is concerned. The Committee examined the decisions in several cases made by both the Interstate Commerce Commission and the South Dakota Board of Railroad Commissioners, in which it is clearly shown that the theory announced by the Governor is not in any sense controlling and that both the Interstate Commerce Commission and the Board of Railroad Commissioners of the state of South Dakota have decided cases and prescribed reasonable rates on commodities without regard to the financial condition of the carriers involved or without consideration of the effect that the establishment of reasonable rates will have on such carriers. The record shows that the carriers in the western district, even for a period of approximately ten years, have not received the return indicated by Congress as reasonable, *i. e.*, 5½ per cent; and if the theory announced by the Governor had been operative there undoubtedly would have been no reduction in rates during that period of time, whereas the record shows through orders of the Interstate Commerce Commission and through orders of the Board of Railroad Commissioners that reductions have been made in a large number of cases, aggregating several million dollars per year, which have resulted in savings to South Dakota shippers.

CHARGE NO. 3—*"The trucks and busses now handle most of our intrastate transportation."*

FROM the information which was presented to your committee as to the relative volume of traffic handled by trucks and busses compared with the total traffic transported, we are inclined to the view that the statement quoted must have been made without any investigation as to the facts, as it is clear from the record that the traffic handled by trucks and busses in the state of South Dakota is an immaterial part of the total.

CHARGE NO. 4—

(a) *"That an abolishment of our Railroad Commission and an abandonment of our attempted arbitrary rate fixing program would ensue to the material benefit of the people of South Dakota by throwing the transportation and traffic problems open to competition."*

(b) *"Our State Railroad Commission has nothing to say about fixing interstate rates and a discontinuance of their activities would not effect interstate traffic charges.*

(c) *"With our competing railroad lines, motor bus lines, automobile and truck transportation, by removing the prescnt designation of what the respective traffic charge shall be and throw the thing open to competition, I believe would result in a tremendous saving to our people in transportation expense. It is my belief that this (the appropriation for the Railroad Commission) is just a fractional part of what it costs our people by prohibiting traffic rate competition."*

THIS statement (a) is not supported by any witnesses appearing, but, on the other hand, such witnesses testified directly to the contrary and supported their testimony by what appears to be sound reasoning. In the first place, it is clearly contrary to the facts to say that the Commission fixes arbitrary rates or has an arbitrary rate fixing program. Each case before the Commission is presented and decided upon its merits and the rates finally established therein are what are determined to be reasonable maximum rates. In other words, the carrier cannot exceed the maximum rates so established; they are permitted to publish and make effective lower rates than the maximum rates thus established. If the Governor had in mind the effect of motor competition as affecting rail rates, it is deemed sufficient to say that, do away with regulation of rates and the rail carrier will not even be concerned with the amount of tonnage diverted from its lines because it will be in a position to place rates sufficiently high on remaining tonnage, much of whichis long haul and must move by rail, to meet its requirements, and the public being compelled to pay the entire cost of transportation it must inevitably follow that because of this diversion of tonnage and the increased cost of carriage the burden on the public will be increased. As a practical proposition, the truck line rates are controlled, in large measure, by the rate of the rail lines and an increase in rail rates would undoubtedly bring about corresponding increases in rates of the truck lines, thus further increasing the transportation burden upon the public. It appears sound that if a sufficient amount of traffic is diverted from the rail lines, making necessary the imposition of rates so high in orderto maintain rail properties as to make it impossible for the producer and industry generally located in a State like South Dakota that has little transcontinental or through business and because of its location finds its necessary to transport its products long distances to compete with business or industries located more favorably, it cannot help but result in a depopulation of the state, which will eventually bring about an abandonment of rail mileage and create a situation making it impossible to develop our re-

sources or even maintain industriies and agriculture as they now exist in this state.

(b) It is inconceivable to us, in view of the actual facts, how anyone conversant with the laws of this state or having any knowledge whatever of the activities of the Board of Railroad Commissioners would make such a statement.

(c) It is very clear on this record that the total expense of maintaining the Railroad Commission per annum will not amount to one-fifth of one per cent of the saving to the people of the state of South Dakota through reductions secured in rates without giving consideration to the various other activities of the Board in connection with the regulation and control of warehouses, telephone and telegraph companies, motor carriers and railroad service.

CHARGE NO. 5—*"If it should be the judgment of the Legislature that we continue to fix intrastate traffic rates, I would then recommend the passage of a measure providing for the appointment of a traffic expert in connection with the Attorney General's office and transferring the powers now exercised by the Railroad Commission to the Attorney General."*

WE have given careful consideration to the suggestion made both from a theoretical and practical standpoint as well as to the legal aspect of the situation, including any possible reduction in the continuance of the work and the expense in relation thereto, and we are firmly of the opinion that the idea is unworkable and impracticable, both from the standpoint of results to be obtained and with reference to the cost thereof. The actual work engaged in by the Board of Railroad Commissioners and its employees, as clearly demonstrated by the record, is of such volume and of such varied nature that it would clearly be impossible for the organization as suggested in the recommendation to function at all. . . .

FINDINGS

From the entire record, we desire to report that, in our opinion, the Board of Railroad Commissioners is organized upon a sound an economical basis; that the Commissioners and the employees are capable, efficient and untiring in the performance of the duties, powers and responsibilities imposed by law upon the Commission.

It is contended by the Commission that its present force is greatly overworked and that, if it were in position to secure more assistance and meet more necessary costs incident to the prosecution of cases, it would be able to achieve still greater results. This contention is thoroughly and completely established by the record before this committee. It is also clearly demonstrated by the record that there never has been, in the history of the state, a time when the activities of the Board of Railroad Commissioners, as prescribed by existing law, were more necessary or more vital to the economic life and the industrial development of this state than at the present time and in the immediate future.

In accordance with the above findings we commend the Commission for the conscientious and effective efforts that it has made and is making for the welfare of the people of the state in so far as transportation and utility matters under its control are concerned, and we recommend to the Legislature that the Commission as at present organized be continued to the end that the value of an efficient and experienced organization may not be lost to the state.

We further recommend that the Legislature, and appropriate committees thereof, give consideration to the desirability and wisdom of providing the Commission with sufficient funds so

that its personnel may be retained in order that the work of the Commission may not be weakened and hampered in any way.

A copy of the transcript of the evidence will be filed in the offices of the Governor, Secretary of State and the Railroad Commission, and we would urge that all persons interested familiarize themselves with the contents thereof.

Respectfully submitted,
BY THE COMMITTEE,
J. H. Peterson, *Chairman*,
W. C. Westphal,
C. Jensen,
S. G. Gilliland,
H. E. Mundt."

The Motives that Prompt the Attacks Upon and the Defense of Public Utilities

"THE evidence shows," declares the attorney for the people (in arguing a rate case before a Commission), "that this utility company deals ruthlessly—" and so forth.

"The evidence," says the attorney for the utility company, "shows bad faith on the part of the ratepayer."

"What?" thunders the attorney for the people, "Are we to hear talk of bad faith by counsel for a utility company?"

"It's a waste of lather to shave an ass; I will therefore say no more," concludes the counsel for the company.

So they settle down until another outburst.

Newspaper reports of controversies between the companies and the public are usually spiced with charges of bad faith and improper motives. It seems to be hard for the average man to understand that there is any possibility of his being wrong, or of anybody else honestly coming to a different conclusion from that at which he has arrived. Consequently it is easy for him to accuse his opponents of improper motives and to call bad names. This is a practice too often indulged in.

To the politician, the claims of the utility companies are inspired by the sole purpose of extortion; to the company, the actions of the politician are inspired solely by political motives.

The truth of the matter is that one can never be sure of the motives of any person other than himself. All one can do is to put one's self in place of the other man and consider what one's own motives would be under such circumstances. That, in fact, is what is usually, even if unconsciously done.

When actions are explainable on the basis of either an honest or a dishonest motive, the honest man accords the benefit of any doubt in favor of honesty of the motive. The man who is intellectually hisdonest instantly implies dishonesty to men who differ from him.

Let us be careful, therefore, not to impute dishonesty or improper motives to other persons, lest discriminating men may regard this as a fair index to our own character.

—RICHARD LORD.

What Will the New Congress Do About the Railroads?

By JOHN T. LAMBERT

THE Seventieth Congress passes into history, as its predecessors have done also, without any whole-souled effort to alter the laws which regulate the consolidation of the great railroad lines of the nation.

Effective consolidation has proved to be utterly impossible even under the benign and beneficent Act of 1922, which was presumably molded for the direct purpose of enabling the railroads to merge themselves into a few great systems for the advantages which would consequently flow both to themselves and to the public.

Although proposing a formula of consolidation, that act required that before any immediate consolidation could be adopted the Interstate Commerce Commission must evolve an elaborate plan involving consolidation of all the railroads of the country. To adopt a hard and fixed scheme of consolidation which would unite the lines into a new system regardless of future changes and developments among the lines themselves was a task of doubtful value which the Commission has found impossible to do with any prospect of safety.

Then, of course, the 1922 law provided also that the consolidations should be real and complete and, in that, the law ignored the fact that while a merger of interests could be reasonably effected by some of the railroad units, actual consolidation could be attained only with the greatest difficulty. A railroad which has a long and honorable career as its record might conceivably unite in interest with some other more potent but not more historic system while absolutely declining to participate in a "consolidation" which would efface its reputation and identity.

EX-President Coolidge has been keenly interested in unification of the railroads. He has recommended it with increasing vigor in his messages to Congress, and he would have regarded broad-scoped consolidation as one of the economic achievements of his administration. He has looked upon the abandonment of weak lines and the curtailment of passenger service with growing concern. He has felt that the consolidations would have effected economies, would have improved both the passenger and the freight services and that the resultant advantages would have been shared by the roads in better balance sheets and by the public in more efficient service if not in actual rate reductions. In that viewpoint, he has had the company of an Interstate Commerce Commission which felt its

hands to be tied by the very law that was calculated to promote consolidations.

WHY Congress has dallied with his recommendations and with various other plans to remove the legal impediments to consolidation is one of those Congressional lapses upon which the blame can be laid with difficulty. Your Congressman will say that he regards consolidation as one of the most important economic ends to be reached in this enormously expanding era of business and industrial pursuits. He will say, however, that the general public has not pressed for action; he may also respond with a statement that the railroads themselves have failed to come forward with a plan of consolidation which commanded universal support from among themselves. The fact seems to be, however, that the Congressmen have not been diligent in pressing their own plans for simplification of the railroad law and that there have been few among them whose attention has not been devoted to other public matters of more vital concern to themselves.

BUT the simplification legislation is now in the making. Both Senate and House Committees have evolved plans which are practically identical. They propose to eliminate the necessity for the adoption of a national consolidation plan by the Commission and they propose unification of the railroads by acquiring of a majority control, of voting interest or of other partial interest actually short of complete consolidation.

President Hoover, like his predecessor, favors consolidation in the interest of economy and efficiency. It is a matter of history that a President is never stronger than when he first assumes the office.

If President Hoover presses for consolidation with his expected vigor, the simplification law will, in all probability, have become history before the completion of his first year in the White House.

Have the State Commissions the Power to Regulate the Management of Holding Companies?

THIS is a question that is becoming of growing importance, not only to the holding companies, but also to the utility companies, to the State Commissions and courts, and to the holders of public utility securities. A comprehensive survey of some of the important legal phases of this problem, written by William M. Wherry, a well-known New York attorney who has made a special study of utility regulation and has written extensively on this subject, will appear in a coming issue of this magazine.

Experience of Oregon With Popular Election and Recall of Commissioners

In view of the differences of opinion that prevail concerning the relative merits of the appointive and the elective systems of selecting State Commissioners, Mr. Merton K. Cameron's article in the February issue of *The Journal of Land and Public Utility Economics*, in which the author cites the experience of Oregon with the popular election of its Public Service Commissioners, comes as a timely contribution to this controversial topic.

The author epitomizes the history of the popular election system and presents the facts upon which his conclusions are based.

The Public Service Commission of Oregon, he states, was originated in 1907, to be composed of three members, one from the state-at-large and one from each of the two congressional districts. In 1908 the "recall" was instituted by constitutional amendment and made applicable to members of the Commission. The original personnel of the Commission, as appointed by the Governor in 1907, included Oswald West, Democrat, representing the state-at-large and Thomas K. Campbell and Clyde B. Aitchison, Republicans, from the first and second congressional districts respectively.

At the close of their appointed terms both Mr. Campbell and Mr. Aitchison were re-elected but Mr. Frank J. Miller was chosen to take Mr. West's place, the latter being candidate for governor. This personnel continued in office until 1916, when Mr. Fred G. Buchtel defeated Mr. Campbell in the western district for no apparent reason other than his popularity in his district. Mr. Buchtel had held various public offices and at the time of his election was state sealer of weights and measures. Mr. Campbell, on the other hand, had been a Public Service Commissioner since 1907. Furthermore, no significant dissatisfaction had been voiced against the work of the Commission. At this same election Mr. H. H. Corey was chosen to succeed Mr. Aitchison who was not a candidate for re-election.

In 1917 the Portland Railway, Light & Power Company petitioned to increase its street railway rates. The Commission ordered certain operating economies on the part of the company, certain franchise changes on the part of the city, and slight rate increases in specific cases. Later in 1917 the company again asked an increase because of rising wages and failure of the city to adjust the franchise as ordered. On January 5, 1918, the Commission authorized an increase from a 5 to a 6-cent fare. Loud protest followed and Mr. Corey stated that a receivership was imminent had not the Commission so acted. Messrs. Corey and Miller said they would consider rate readjustment if the city removed certain franchise burdens, while Commissioner Buchtel virtually promised rate reduction.

Then came the primaries. Mr. Miller was a candidate for re-election and presented no platform. His opponent, Mr. Fred A. Williams, an attorney, stood for rate reduction for all utilities through use of tax statements in valuation for rate-making purposes. Mr. Williams was successful at both the primaries and the November election. Mr. Miller's defeat seemed directly attributable to his vote for the 6-cent

fare, in spite of his generally conciliatory attitude.

AGAIN in May, 1918 the company asked a rate increase because of increased operating costs. The Commission refused rate changes, until the city had made the franchise adjustments ordered, and recommended that the city purchase and maintain the rails. Mr. Corey dissented in this recommendation, favoring a 7-cent fare. In spite of criticism of this decision as a political expedient, Messrs. Corey and Buchtel won by large majorities in the May primaries immediately following.

The Commission's recommendations were useless, because the city did not have legal power to purchase the rails and the voters would not remove the franchise burdens. After a new hearing an 8-cent cash fare was ordered. Commissioner Williams did not participate in the decision. No protest followed the order and some regarded this fact as an indication of confidence in the Commission.

In November 1920, the Pacific Telephone & Telegraph Company petitioned to increase exchange rates because of increased operating costs. The Commission ordered rate increases below those asked for and on condition of certain extensions and an increased operating force. A committee of citizens appealed to the courts; recall petitions were circulated at once, and filed on April 25, 1922 with enough signatures to recall Messrs. Buchtel and Williams. Mr. Williams' term had but eight months to run at the time and he had already announced he was not seeking re-election. Neither of the Commissioners made a campaign and on May 19 Messrs. T. M. Kerrigan and Newton McCoy, both Portland lawyers and inexperienced in public utility regulation, were elected to fill out the terms of Commissioners Williams and Buchtel respectively.

Upon the installation of the recall candidates a general rate reduction was expected. At the second attempt Mr. Kerrigan secured a withdrawal of the Commission's answer to the appeal mentioned above. Mr. Corey dissented. A week later Mr. Kerrigan was nominated to run against Mr. Campbell in the November election. The Commission was being criticised for not reducing rates, and on September 9 a rehearing of the telephone case was ordered. On October 26 the Commission ordered a temporary reduction of rates and at the same time made specific demands on the company, but the company secured an injunction restraining the order. Mr. Corey again dissented and Mr. Kerrigan was subsequently defeated by Mr. Campbell. The rehearing, which was reopened on June 4, 1923, ended in a decision similar to the original one.

AS a result of nominations made prior to this order, Commissioner Corey was re-elected in November on his record and in spite of his favorable attitude toward upward rate revision. Mr. Edward Ostrander's election to succeed Mr. McCoy marked the failure of the second recall candidate to secure re-election, although he had generally favored rate reduction.

At the last election in 1926 Mr. Louis Bean, who had taken Mr. Campbell's place as candidate from the state-at-large, was successful by a large majority.

Meanwhile dissatisfaction was current. Repeated rate increases led to accusation of the Commission as a "servant of the utilities." Inability of the voters to judge the qualifications of candidates was given as the cause of a bill proposing appointment and removal of Public Service Commissioners by the Governor which was passed in 1927.

Mr. Cameron's conclusions are summarized as follows:

> "On the whole, the experience of Oregon would seem to indicate (1) that the greater the number of the electorate involved in Commission decisions, the greater the pecuniary sacrifice that it is compelled to make therein; (2) and that the more articulate and susceptible of manipulation is public opinion as in urban centers, the less satisfactory is the policy of popular

election of Public Service Commissioners; and (3) that the evil consequences of popular election under these conditions are intensified by the use of the recall."

—DAVID LAY

THE EXPERIENCE OF OREGON WITH POPULAR ELECTION AND RECALL OF PUBLIC SERVICE COMMISSIONERS. By Merton K. Cameron. *The Journal of Land and Public Utility Economics*, February, 1929; pp. 48–61.

Proposals for Regulating Aerial Transportation and Interstate Bus Lines

THE 1928 Proceedings of the National Association of Railroad and Utilities Commissioners have just been published in the form of a handsomely bound volume of 548 pages, published by the association. Those interested in railroad and public utility problems will find much of interest in this volume. A noteworthy feature of the book is its reference to aeronautics; for the first time the association has taken cognizance of transportation by air as a public utility. A few states are already regulating this form of transport and a few other states are about to undertake it, but await statutory authority. The association appointed a special committee to draft a uniform law for the regulation of air transportation and to report at the next convention, to be held in Glacier National Park, Montana, August 27 to 30, 1929.

Another matter of interest considered by the 1928 convention, and reported in this volume, was the Walsh Resolution for the investigation of public utilities throughout the country. When this resolution was presented in the United States Senate, President Wells, of the National Association, appointed a special committee to appear before the Interstate Commerce Committee of the Senate in behalf of the association; the chairman of this committee was Hon. Lewis E. Gettle, of Wisconsin, now president of the association. In the 1928 meeting Mr. Gettle made both a report and a talk on this subject; it is of special interest not only to State Commissions but also to the utilities.

Regulation of motor carriers is also the subject of discussion. The Committee on Motor Vehicle Transportation, of which Hon. Amos A. Betts, of Arizona, is chairman, contributes an informative report of the growth of this form of transportation, the development of which in the last few years has been phenomenal. Today motor carriers are operating more miles of lines than the steam railroads of the country.

Hon. John E. Benton, General Solicitor of the National Association, as chairman of the Special Committee on Motor Vehicle Legislation, contributes a report on the efforts of the association to obtain congressional legislation covering the operation of interstate bus lines—now without any kind of regulation. The association, it may be observed, approved his recommendation that Congress be asked to pass the Parker Bill, making the State Commissions agents of the Federal Government in regulating such carriers, subject to the authority of the Interstate Commerce Commission.

The volume also contains reports on grade crossings, the express business, holding companies, the relations between State and Federal regulating bodies, service of railroad and public utility companies and statistics and accounts.

—RICHARD LORD.

1928 PROCEEDINGS OF THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS. 8vo. New York: National Association of Railroad and Utilities Commissioners. 548 pages. 1929.

Growth of Man as Measured by His Communication Facilities

IN "The Story of Human Progress," which is a revised edition of an earlier book on the same subject the reader will find a splendid outline of man's advance from the time of his Neanderthal ancestor on, together with a clear and interesting explanation of the underlying cause of his progress.

Man's upward climb seems to have been only a matter of his growing skill in multiplying his own powers by the use of tools, by harnessing the forces of nature, by increasing his means of communication and his ability to live with his neighbors and co-operate in a social organization.

At no time has man's progress been so rapid as that which he has made in the last hundred years. Man's conquest of distance may be taken as an illustration of that fact. On this subject the author says:

> "A review of the story of man's conquest of distance shows that there have been three periods or eras in that task:
>
> "The first era lasted through long hundreds of thousands of years, down to the time of neolithic man. Man had to depend upon his own legs for walking and upon his arms for paddling. The sandal, the moccasin, the carrying stick and a rude boat were his best tools, and even these came relatively late in his history.
>
> "With neolithic man the second era began. Neolithic man found multipliers by taming animals for transport on land and by harnessing the winds for travel on the waters. Gradually post-neolithic man added the wheeled carriage on land and the sailing ship for the seas. But the slowness of man's progress through ten thousand years may be seen from the fact that as recently as 1834, an English statesman, needing to make a hasty trip from Italy to England, made no better time than Caesar (102-44 B. C.) could have made, and Caesar could not have excelled a well-equipped neolithic savage.
>
> "The third era began only a little over a hundred years ago—almost in the memory of men still living. It is the era in which man, the harnesser of nature, makes nature's powers fetch and carry for him. Man, building on his progress of the past, has harnessed steam and electricity in such devices as the steamship, the steam and electric railway, the automobile and the airship. With these he shuttles and scuttles about at dizzy speed. Four hundred years ago Magellan's crew went around the world in three years. It could be done today in forty days, using just our regular ways of travel. It could be done in much less if one were out to make a record.
>
> "The startling thing is the fact that the rapid development of man's conquest of distance is but a generation old. So recently has man become a god!"
>
> —RICHARD LORD.

THE STORY OF HUMAN PROGRESS. By Leon C. Marshall, Professor of Economics, University of Chicago. 8vo. New York: The Macmillan Company. 446 pages. 1928. $3.50.

Publications Received

SYMPOSIUM ON ELECTRICAL ADVERTISING. Serial Report of the Electrical Advertising Committee, 1928–29 of the National Electric Light Association, New York. 130 pages. January, 1929. $1.85.

INDUSTRIAL EXPLORERS. By Maurice Holland, with Henry F. Pringle. 8vo. New York: Harper & Brothers. 347 pages. 1929. $3.00.

"Public transportation for people in mass is an absolute necessity for any city grown beyond the one-horse stage. The butcher, the baker, the merchant, the manufacturer, the home owner and the worker are dependent on it directly. If you doubt this fact, suggest the removal of the skinniest line now operating in your home town and hear the protests."

—TOM P. WALKER.

The March of Events

Regulation by Federal Power Commission

THE extent to which the authority of the Federal Power Commission goes in the regulation of rates, service, or securities of companies holding water power licenses has been the subject of an opinion submitted by Major L. W. Call, chief counsel of the Federal Power Commission. This has been approved by the Commission.

Of special interest is the discussion of the authority of the Power Commission over service within a state. After a review of leading cases on the subject of state and Federal powers, the conclusion is reached that the jurisdiction of the Federal Power Commission over intrastate commerce and electric energy within any state may be exercised only to the extent and as long as the state has not provided its own agency, and that it extends to licensees of the Commission and to their customers only in so far as they are engaged in the public service and only to the extent that the acceptance of such jurisdiction is a contractual obligation and enforcible on the parties.

The other points involve the grounds for invoking the jurisdiction of the Commission and the procedure to be followed in water power proceedings.

Connecticut River Power Development

ONE of the largest hydroelectric undertakings in the country, according to the New York *Times*, is under construction at Fifteen Mile Falls, the name given to a twenty-mile section of the Connecticut river in which the river drops 320 feet. The construction is under the direction of the Connecticut River Development Company, part of the New England Power Association.

Two dams, each 175 feet high, have been planned and power houses will be built adjacent to them to develop 300,000 horsepower. The lower dam will create a lake eight miles in length, and the upper dam, built at the headwaters of the lower reservoir, will form a second lake twelve miles long. The combined capacity of this twenty miles of waterway will be more than 91,000,000,000 gallons.

Part of the construction is on the Vermont side of the river and part on the New Hampshire side. The energy, which will be generated at 13,800 volts, will be stepped up to 220,000 volts for long-distance transmission and reduced to 66,000 volts for local distribution. An outdoor switching station on the Vermont hillside downstream from the power house will be one of the terminals of the high tension line tying this plant to the New England Power Association's distribution network.

Alabama

Direct Current Rates

EFFORTS of the city of Mobile to eliminate the 20 per cent differential required of direct current consumers for commercial usage brought the matter before the Commission on March 20th, at which time an expert testified for the city that an excess rate of 7.6 per cent as a probable maximum is all that is justified as compared to the power company's excess cost claim of 26 per cent and actual charge of 20 per cent for direct current service.

Witnesses for the company attempted to justify the 20 per cent differential on the ground of the higher cost of this service. As one basis for the excess rate, E. W. Ashmead, manager of the rate research department of the power company, told the Commission that there was a large loss through "slow" direct current meters. He said that all direct meter troubles tended to slow them up or not register the full amount of current passing through them. J. C. Robinson, assistant superintendent of distribution of the Alabama Power Company, gave additional testimony on the burden borne by the company in the operation and maintenance of direct current meters as compared to the "highly efficient" alternating type.

The company also asked permission to withdraw the commercial rate schedules designed for statewide application, and carrying clauses containing the identical differential from which Mobile is seeking relief. The company was unwilling to go further into the matter of rate revision until completion of an exhaustive study of the sub-

ject now under way. Attorney P. W. Turner, for the power company, was doubtful if the utility's receipts would justify the reduction contemplated under the commercial schedules which previously had been proposed by the utility.

Canada

Northwest Telephone Company Incorporation

AN amendment to the bill to incorporate the Northwest Telephone Company, the Victoria *Colonist* tells us, was defeated by a vote of 27 to 16 in the legislature of British Columbia on March 6th. The amendment provided that the share capital of the company could not be increased without the consent of the Lieutenant-Governor-in-Council.

The sponsor of the bill held that the amendment was unnecessary; that the only way to have control over such a corporation was through a Utility Commission which would base the tariff on the amount of money actually invested in the undertaking. The amendment, it was asserted, would protect neither the public utilities nor the shareholders.

Supporters of the amendment took the view that shareholders who have invested money in a company in excess of the money actually invested in the plant have an influence upon the charges. It was stated that there were many who believed that the demand for higher street car fares in Vancouver, for example, had been brought about by the increased capitalization of the street car company.

District of Columbia

Change of View on Fare Raise

MEMBERS of Congress will be slow to interfere this year if the Capital Traction Company presses its petition for higher street car fares, says the Baltimore *Evening Sun*.

A flood of protests from senators and representatives last summer helped in averting an increase in fares, but it is reported that the legislators are not disposed to interfere again because the organization which solicited their protests on the ground that it was improper to raise fares while the merger plan was pending in Congress later appeared before the Senate District Committee and did their best to block this same merger. Some of these senators who responded to the appeal of the organization last year, the *Sun* continues, are of the opinion that they were "doubled crossed" by it when that organization tried to block the merger.

Mercer G. Johnston, director of the People's Legislative Service, in reply, said that his request for the members of the House and Senate to protest against granting an increase in fares while the merger was pending in Congress did not carry with it any promise on his part to support the merger resolution; that he would not have committed himself so far in advance.

Georgia

Gas Rates in Atlanta

THERE will be no revision of the gas rates effective in Atlanta and adjacent territory until natural gas is available, which will be during the latter part of the year, according to a statement given out by Chairman James A. Perry of the Commission on March 30th. The present rates became effective on January 1st and for the one month available thus far a reduction of $22,000,000 was had in the revenue of the company under the new rate. The statement continues:

"Natural gas for Georgia is one of the big things coming our way over a period of a long number of years. Aside from the certainty that gas will be carried under the present project to Macon and as far north as Dalton, as well as to provide service at intermediate points where distribution systems may be constructed, tentative arrangements have been worked out extending the service to Milledgeville and Columbus. I see no reason why, within the next two or three years, natural gas should not be available at least at every city now having arti-

ficial gas, as well as at all intermediate points in reaching the different cities now served with artificial gas.

"The Commission will start in ample time for the work of revising the present rates, as low as can be justified, and the new rates will be immediately effective on natural gas being turned into the mains."

Contracts providing for the distribution of natural gas in Atlanta, it is stated in the Atlanta *Journal*, were signed on March 29th by officials of the Southern Natural Gas Corporation, the firm which plans a pipe line from the Louisiana field, and the Central Public Service Corporation, which recently acquired the Atlanta Gas Light Company.

Illinois

Water Diversion Case May Affect Rates

ELECTRIC consumers of the Commonwealth Edison Company, it now appears, may be affected by the outcome of the lake level controversy. If the diversion of water from Lake Michigan by the Chicago sanitary district in excess of 1000 cubic feet per second is prohibited, the utility company may have to remove its generating plants from the banks of the Chicago river and its branches, and establish them on the lake.

Several states claim that the diversion of water at Chicago to dilute the city's sewage has caused a lowering of the level of the Great Lakes, which, in turn, has interfered with lake shipping and consequently has damaged their commercial interests. The United States Supreme Court has held that there is no legal warrant for diverting water for sanitary purposes; that diversion is justified only for navigation. The question of the amount of diversion permissible has been referred to Special Master Charles Evans Hughes for determination.

W. S. Monroe, engineer, and Edwin J. Fowler, statistician of the Commonwealth Edison Company, have made elaborate studies of the effect of the decision. Mr. Monroe, it is stated in the Chicago *Tribune*, is ready to testify that between $90,000,000 and $100,000,000 has been invested in plants placed upon the branches of the Chicago river because of the large amount of water needed for cooling purposes. If the river is to contain only stagnant water, the Edison plants, it is asserted, will have to be moved. These plants are said to require for their purposes about 2100 cubic feet per second, but since a plant can only take water from half of the river, a flow in it of 4000 cubic feet per second is necessary.

Hearing on Telephone Rates

FINAL evidence in the suit brought to compel the Illinois Bell Telephone Company to refund $9,000,000 to Chicago telephone subscribers was to be introduced before three judges of the United States District Court on April 15th.

The litigation grows out of the rate ruling of the Commission in 1923, which the company contends is confiscatory. A temporary injunction against the rates was obtained and later that injunction was confirmed by the United States Supreme Court. A reserve was created, however, for the purpose of making refunds to patrons in case the order of the Commission should be ultimately sustained.

Indiana

Blanket Advertising of Bills

PATRONS of the Richmond Home Telephone Company, it is stated in the Indianapolis *News*, have entered objections with the Commission to the practice of the company discontinuing service without notice, and requiring a reconnection charge of $1. It has been the practice not to send out statements of the amount of the bills but to run advertisements in the newspapers saying that telephone bills payable a month in advance are due on the first of the month, and if they are not paid between the first and the tenth, service will be discontinued to patrons who are delinquent.

It is reported that the Commission has directed officials hereafter to send out individual statements either by mail or messenger and to substitute the usual 25-cent monthly charge for bills not paid on or before the tenth of the month preceding the service given, inasmuch as the company charges for its service in advance.

Kentucky

Louisville Street Car Fares

THE proposal of the Louisville Railway Company of a 10-cent fare and a 40-cent weekly pass has met with opposition on the part of city officials. Definite assurance, it is stated in the Louisville *Herald-Post*, has been given the mayor by representatives of the council that he will receive the full backing of the membership in his present policy toward the car company, and in any future policies he may outline.

A resolution was passed by the general council on March 26th extending for ninety days the time for considering the fare question. During that period the administration will perfect its plans for defense of its fare policy.

The company has contended for a valuation of $28,000,000, while the valuation set by the board of public works is $17,000,000. Representatives of the company contend, however, that the increased fare would be justified if a considerable concession were made on the question of valuation.

The increase in revenues from a higher fare would not all go to the stockholders, it has been announced, since the company has promised that on the day the increase becomes effective, 1600 employees will get an increase of 2 cents an hour in their pay. This would raise the annual payroll $110,000.

Maryland

Appeal in Car Fare Case

FOLLOWING a denial on March 21st, by the court of appeals, of an appeal by the United Railways Company of Baltimore for a higher rate of return on its investment, an appeal to the United States Supreme Court is under way. The action of the state court, says the Baltimore *Sun*, was anticipated by officials of the company and the Commission, and opens the way for the appeal to the highest court. Last year the Supreme Court dismissed an appeal by the company on the ground that the case was still pending in the state courts.

The company alleges confiscation and is contending for a return on the basis of 8 per cent annually. This recent decision by the court of appeals followed a Commission order raising the fare to 10 cents or four tokens 35 cents. This fare was based on a former court of appeals ruling that depreciation should be made on value and not cost. A return of 6.26 per cent annually was allowed and the court of appeals held that this was not confiscatory.

Massachusetts

Gas Rate Hearing Postponed

THE new schedule of the Boston Consolidated Gas Company, including a service charge of 50 cents a month and revised rates per thousand cubic feet, has been postponed by the Department of Public Utilities until May 1st, at which time a hearing will be held.

The Boston City Council on March 25th adopted an order providing for the employment by the city of a utility expert to fight the new rates.

The company petitioned the Commission for permission to put the new schedule of rates into operation on April 1st but the proposed changes, it has been announced, would be suspended until the case is settled.

Missouri

Appeal on Gas Rates

THE city of St. Louis, according to the St. Louis *Post-Dispatch*, will appeal from the Public Service Commission's denial of a rehearing of its order issued last January 15th, giving the Laclede Gas Light Company an increase in rates. The Commission denied the motions for rehearing filed by both the city and the gas company.

It is contended on the part of the city that the valuation of $47,000,000 allowed by the

Commission was too high; and the company, on the other hand, contends that it was too low. The city objected particularly to an allowance of $5,818,000 for going value and also asserted the new rates were unfairly discriminatory in their application against domestic consumers and in favor of commercial users of gas.

New Hampshire

Commission Legislation

BILLS passed by the senate on March 28th and sent to the Governor would permit the Commission to charge to utilities the cost of the investigation necessitated by matters brought before the Commission on initiation of the utilities themselves, and would permit the Commission to order the suspension of export of electrical energy when it is found that such energy is needed within the state, according to a summary of the legislation in the Keene *Sentinel*.

In the house, it is reported, the judiciary committee filed a new draft of a pending bill under which the Commission could require the attendance of the attorney general in any case in which the public interest is such as to warrant representation. This bill, it is explained, does not, as at first suggested by members of the committee, create an additional assistant attorney general, but takes advantage of existing law permitting the attorney general to employ special counsel when needed, and gives to him added authority to employ in those cases such experts and assistants as may be needed to handle public utility proceedings.

A bill purporting to place electric and gas utilities in the same class as railroads and other utilities for taxation, says the Manchester *Union*, was carried by the house on March 28th without debate and by a unanimous vote. Representatives of the power interests, it is said, deny that this is the effect of the legislation.

New Jersey

Further Extension of Gas Rates

THE proposed adjustment in the gas rate schedule of the Public Service Electric & Gas Company, which had been suspended from January 1st to April 1st, has been suspended by the Commission for another three-month period to July 1st. Such suspension was necessary by the fact that no hearing was held until April 3rd and were there no suspension, the rates would have gone into effect April 1st.

Wholesale Rates for Schools

THE Newark Board of Education, it is stated in the Newark *News*, on March 28th was asked by the West Side Improvement Association of Rutherford if it would join with the schools of that city in seeking a wholesale rate on light and power from public service rather than a rate based on the individual consumption of each school building. The proposal is said to have been met with instant favor among the board members and was referred to Corporation Counsel Myers for a study of the legal status of the situation.

The opinion was expressed that the schools were entitled to rates based on their entire consumption rather than on the consumption of each school, but Mr. Myers was doubtful as to whether the Commission could give schools or other public institutions a wholesale rate on light and power because discrimination would be shown. He was willing, however, to take the matter up with the Commission and determine what action should be taken.

Apartment Rents to Cover Utility Service

A GROUP of North Hudson real estate men and apartment house operators, it is reported in the Hoboken *Observer*, have been considering plans for thwarting the increased rates proposed by the Public Service Company through the purchase of service by owners of apartment houses who in turn will include the cost of this service in rent charges.

The advantage of this plan would be the

obtaining of service under the lower consumption rates on a wholesale basis. While the submetering of service to tenants has been disapproved by the Commission, the furnishing of such service by landlords who do not make a special charge for it has been permitted. The utility service would be rendered the same as janitor, heating, and water service are rendered in many apartment and office buildings.

New York

Public Utility Legislation

THE greater part of the bills introduced in the legislature affecting public utilities failed of passage. Among these bills were the New York Transit Control bill, the governor's water power plan, the bill regulating submetering of electric current, and the bill for a suburban passenger traffic inquiry by the port authority.

A bill was passed, however, to create a commission to investigate the public service law. Another bill was passed to provide for the reduction of expense to localities in the matter of eliminating railroad crossings at the grade of highways.

All Parties Object to Phone Rate Findings

EXCEPTIONS to the report of Isaac R. Oeland, as Special Master in the New York Telephone Company's rate case have been filed by the Commission, the city, and the state acting in concert, and also by the New York Telephone Company.

The former asserts that the master disobeyed the orders of the court in failing to make his report full and adequate and that his findings, which granted a rate increase of approximately $22,000,000 in the state, were based on mistaken estimates. It is alleged that he failed to make deductions for depreciation, other than an allowance for deterioration, and that he failed to recognize such important factors in depreciation as obsolescence and inadequacy.

Objection is also made to allowances for operating expenses, for rate of return, and for various items of value.

The phone company alleges that the master, contrary to the weight of evidence, undervalued the company's property by more than $100,000,000 and disallowed certain items of annual expense amounting to approximately $3,000,000. This contention resulted from the deduction of about $100,000,000 as the value of property used in interstate service. Then too, the value of the company's franchises was not included in the valuation, and this is objected to as improper.

The allowance for going value is attacked as inadequate and the exclusion of "the cost of a hypothetical group which would be necessary to promote the project of reconstruction" is also excepted to by the attorneys for the telephone company.

Ohio

Briefs Filed in Gas Case

BRIEFS outlining the city's case in its request for a permanent injunction restraining the East Ohio Gas Company from discontinuing service at Cleveland unless the consent of the Commission is obtained were filed in appellate court on March 25th.

The lower court ruled in favor of the utility by sustaining its right to shut off service. The city contends that the company comes under the jurisdiction of the Commission in accordance with the provisions of the Miller Act. This is denied by the company.

The city holds that the Miller Act is applicable to the case, that it is a constitutional regulation of a public utility and does not contravene any present articles of the state constitution. The controversy has arisen from the company's request for a 5-cent increase per thousand cubic feet in the rates to the average consumer. The rates would, at the same time, however, decrease the cost to consumers using more than 50,000 cubic feet by approximately 15 cents for each thousand feet.

Pennsylvania

Utility Bills Defeated

THE Senate and House committees on March 26th killed, for this session at least, the Davis-Pethick bills which if enacted would have prohibited public service companies from raising rates before the Commission passes upon them. There was some talk of asking the House and Senate to put the bills on the calendar notwithstanding the action of the committee, but, according to the Wilkes-Barre *Times-Leader*, there was little likelihood of this being done.

Another bill, intended to prohibit public utilities from exacting penalties in excess of the legal rate of interest on delinquent bills, is said to have met a similar fate at the hands of the law makers.

Utility Payments Held Up

RECEIPT of information by the Philadelphia City Council that Director of Public Safety Schofield was holding up the 1929 contracts with the Philadelphia Electric and the Bell Telephone companies because he felt the rates were too high, resulted on March 21st in his being summoned before the council to explain.

One councilman charged that the "new political combine in this city is trying to drive corporations into line by holding up their pay." It developed that the city had used the services of the companies for three months but had not yet paid anything for them.

Director Schofield contended that the rates were too high and that he should not sign the contracts until they had been thoroughly investigated. He informed the council that he had had conferences with the officials of the electric company and they were receptive to his recommendations.

Vermont

State-Wide Rate Investigation

A RESOLUTION reported in the Vermont House of Representatives last month by the committee on commerce and labor called for the authorization of the Public Service Commission to conduct a state wide investigation of electric rates with a view to effect reductions and uniformity. The measure was referred to the appropriation committee because it called for $5000 to meet the cost of the proposed investigation.

The resolution declared that power companies in Vermont had made no reductions in rates comparable to cuts effected in other states in recent years, and it also pointed out that rates in different parts of the state were at great variance and the cost of rate investigations was placed entirely on the public.

Washington

Telechronometers

THE Department of Public Works has been investigating the use of telechronometers and telephone rates in Everett. The Department has devoted some time, says the Seattle *Post-Intelligencer*, to inquiry regarding an asserted propaganda campaign against the telechronometer by newspaper advertising and otherwise.

One witness testified that he was in favor of the measured service, "that it was no better at the office, but 500 per cent better at home." He referred to "phone hogs" who visit for great lengths over the phone. Several witnesses testified for and against the use of the telechronometer. Some objection is made to the readiness-to-serve charge, which is collected from all subscribers in addition to the charges based upon the length of their conversation.

One of the witnesses at the hearing on March 21st, stated that he had a switch in the rear of his shop where he could cut off the phone if people came in and used it for too long a time and thereby ran up his bill. This brought a roar of laughter from the audience.

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

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NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS.

RE FIVE MILE BEACH ELECTRIC RAILWAY COMPANY.

Rates — Street railways — Weekly pass — Abuses by children.

A street railway doing mostly a summer business was permitted, in view of declining revenues, to increase its rates for weekly passes, and to remove the transferable feature of the pass supplied to school children in view of the previous abuses of this privilege.

[December 27, 1928.]

APPLICATION by a street railway for approval of change in terms and increase in rates of weekly pass; granted.

Appearance: Mark R. Sooy for the Five Mile Beach Electric Railway Company.

By the **Board**: This is an application of the Five Mile Beach Electric Railway Company for approval of proposed change in terms and increases in rates of weekly passes now issued by it.

The system consists of a single track line 4.2 miles in length, extending from the city of North Wildwood, to and through the city of Wildwood, to and terminating in the borough of Wildwood Crest. By virtue of a decision of the Board rendered December 26, 1924, the petitioner was granted a base rate of 10 cents between any two points on its lines. Subsequently, after due notice to the Board, the petitioner inaugurated a reduced rate in the form of weekly passes for use between September 15th of each year and June 15th of the succeeding year, which pass is transferable and good for unlimited use. The pass is sold at the rate of $1. These passes have been in continual use since January, 1925 and the result of their use and the income thereof to the petitioner is indicated by a comparative table submitted at the hearing and marked Exhibit A. From this table it appears that the average number of riders per pass is about twenty per month for three and one-half years. The testimony indicates that when this pass was first placed into effect the revenue therefrom was fairly satisfactory. This revenue decreased, however, in 1926 and again in 1927 and the decrease has continued during 1928 so that the company feels it must have an increase in the rate in order to maintain it.

This property is primarily a summer operation, by far the greater portion of the company's business being carried on during the months of June, July and August and the early part of September of each year, although a limited regular service is maintained over the system throughout the remainder of the year.

The reason given for the proposed increase in rates is the need of additional revenue which is required to meet the operating expenses of the system.

There was submitted with the petition financial statements indicating the operations of the company from and including the year 1925 to seven months ending July 31, 1928. Exhibit C submitted indicates the financial operations as follows:

	12 months ending 12/31/25	12 months ending 12/31/26	12 months ending 12/31/27	7 months ending 7/31/28
Earnings	$83,952.78	$72,614.90	$66,736.70	$28,546.30
Operating expenses	65,632.69	63,218.84	62,500.38	32,534.15
Net from operating	18,320.09	9,396.06	4,236.32	*3,987.85
Nonoperating revenue	9.49	736.20	390.65	
Net revenue	18,329.58	10,132.26	4,626.97	*3,987.85
Interest deductions	3,488.51	466.84	11.00	†1,359.61
Profit	$14,841.07	$9,665.42	$4,615.97	
Loss				$5,327.46

* Loss.
† Nonoperating expenses.

Testimony was offered to the effect that the value of the entire plant and equipment is $366,000.

Testimony also shows that there is considerable abuse of the weekly passes in connection with their use by school children, due to the fact that these passes are transferable and for this reason the petitioner desires a change in the terms of the pass issued to school children rescinding the transferable feature, the passes to be continued at the existing rate of $1.

No objectors appeared at the hearing but several letters from officials and representative citizens of the boroughs served, advocating or at least not objecting to the proposed increase, were submitted. Reference was made to the proposed substitution of auto bus service for trolley service during other than the summer season, application for approval of municipal consents for which has been made to the Board.

Testimony was offered to the effect that the proposed change in rates, if granted, would be applied to the auto bus service the same as the trolley service. It is apparent, from the evidence, that the revenues of the company are continually diminishing and that it will require an increase in fare in order to meet the cost of operation.

It appears further that there is considerable sentiment among residents of the communities in favor of the application.

The Board, therefore, approves of the proposed schedules of fares, as set forth in the company's petition, effective on and after January 15, 1929.

COLORADO PUBLIC UTILITIES COMMISSION.

E. G. OTTINGER

v.

COLORADO CENTRAL POWER COMPANY.

[Case No. 368, Decision No. 2018.]

Discrimination — Deposit charge — New customers — Antagonism.

Where an electric company, permitted by Commission rules to demand a deposit from new customers to secure payment of bills, has seen fit to adopt its own rule to demand and receive only $10 deposit from new business consumers, the action of the company in requiring more than that amount from a new business customer because of an apparent antagonism which the individual bore to the company is an unreasonable discrimination against the latter.

[December 26, 1928.]

INVESTIGATION by the Commission on its own motion into the complaint of an electric consumer; complaint sustained.

Appearances: R. W. Booze, Golden, and B. Shepard, Platteville, Colorado, for Colorado Central Power Company.

By the **Commission**: On June 6 of this year E. G. Ottinger of Platteville, Colorado, wrote the Commission a letter complaining that because of his refusal to pay a deposit of $24 to Colorado Central Power Company, which is engaged in the distribution of electric energy in Platteville, the said company disconnected his service. He requested that the Commission investigate the

matter of the propriety of the demand of the deposit and that in the meantime his service be restored. The Commission's electrical engineer immediately telephoned the company requesting it to restore and maintain service until such time as the matter could be heard. The Commission thereupon on June 22 on its own motion converted the matter into a formal proceeding, making the said E. G. Ottinger and the said Colorado Central Power Company parties thereto. The matter was duly set for hearing and was heard in the hearing room of the Commission in Denver on December 21st. Although notice was duly given to Mr. Ottinger he did not appear in person or by an attorney.

At a date prior to the time of the beginning of the controversy Colorado Central Power Company adopted a uniform policy requiring new customers to make a deposit for the purpose of guaranteeing payment of current bills. This policy was adopted pursuant to authority contained in Rule 11 of this Commission regulating the service of gas, electric, and water utilities. The said rule reads in part as follows:

"Any utility may require at any time from any consumer or prospective consumer, a cash deposit intended to guarantee payment of current bills. Such required deposit shall not exceed the amount of an estimated 90-days' bill of such consumer, or in the case of a consumer whose bills are payable in advance, it shall not exceed an estimated 60-days' bill for such consumer."

The evidence shows that one Bohlender was the predecessor of Ottinger in the operation of a pool hall in Platteville; that he was succeeded in said business by a partnership known as Ottinger and Bennett, Ottinger being the party hereto; that the said partnership took their electricity under Bohlender's contract with the company; that Bennett withdrew from the firm in February of this year and that the company understood that Bohlender desired to terminate his contract and allow Ottinger to make his own with the company; that thereupon the company, through its district manager Shepard, requested a deposit of $10, following which a controversy arose. Shepard then concluded that because of the apparent antagonism which Ottinger bore to the company, the company should and did require a deposit of $24, being an estimated 90-days' bill.

The evidence further shows that the company has been demanding of new resident consumers a $5 deposit and of new business consumers a deposit of $10. Since the adoption of the policy in question 45 deposits have been made, 13 of them being by business consumers.

The demand for such deposits for new customers is not only permitted by Rule 11 of this Commission but is made by a large number of utilities. The company instead of adopting a rule authorized by the rule of this Commission by which it would charge an estimated 90-days' bill, has decided to demand and receive only $10 from business men. This being true we are of the opinion and so find that a demand of more than $10 from Mr. Ottinger constitutes an unreasonable discrimination against him.

We are of the opinion and so find that the demand of $10 is reasonable and proper.

It now appears that there is some question as to whether the said Bohlender is willing to continue his contract for electric service at the pool hall with the bills being sent in the first instance to Ottinger. However, that is a matter very largely for the determination of the parties themselves.

ORDER

It is therefore *ordered,* That the Colorado Central Power Company serve electrical energy to the said E. G. Ottinger upon his making a deposit with the said company of $10 to guarantee payment of current bills.

It is *further ordered,* That the said company shall be under no obligation and duty to serve said E. G. Ottinger under a contract with him without such deposit.

GEORGIA PUBLIC SERVICE COMMISSION.

RE GEORGIA POWER COMPANY.

[File No. 16,866.]

Valuation — Findings of Federal Court — Gas.

1. The Commission used for rate-making purposes the findings of P.U.R.1929B.

value by the Special Master of the United States District Court, where the valuation of the Commission for the same property previously made had been set aside by such court, p. 311.

Return — Amortization of past losses — Commission authority.

2. The Commission, in view of the fact that it had not been established by the courts that amortization of past losses could be forced, declined to exercise a discretion to make possible authority for such amortization notwithstanding an admission that equity and good conscience would require that such be done, p. 312.

Rates — Comparison — Gas.

3. Gas rates in one community are not comparable with gas rates in another community unless all conditions surrounding the manufacture, sale, and distribution are the same, p. 313.

Rates — Minimum charge — Discrimination.

4. A gas customer paying a dollar a month minimum charge, and entitled thereby to secure approximately 650 cubic feet of gas, was found to be securing service paid for by customers using larger quantities, where the fixed cost to each customer per month was not less than $1, p. 314.

Discrimination — Gas — Prepayment meters.

5. The use of prepayment meters was held to be a highly expensive service, out of date and discriminatory, and such meters were ordered to be replaced as speedily as possible by straight meters at the cost of the company, without the right on the part of the company to require the usual deposit against loss, p. 314.

Rates — Gas — Suburban territories.

6. Higher gas rates to suburbs of a central city were held to be no longer justified where such suburban communities had developed into thickly populated districts, and a uniform domestic gas rate over the entire metropolitan area was directed, p. 315.

Rates — Service charge — Gas rates.

7. A service charge of $1 a month was ordered to be placed into effect by a gas company instead of a former minimum charge, p. 316.

[December 22, 1928.]

INVESTIGATION by the Commission on its own motion into the reasonableness of rates of a gas company; rates adjusted in accordance with opinion and order.

By the **Commission**: This investigation was instituted by the Commission on its own motion and for the announced purpose of reducing the gas revenues of the Georgia Power Company at Atlanta and vicinity, and to determine whether or not the rates prescribed for Atlanta should also be made to apply to the suburban territory, viz: College Park, East Point, Decatur, and Hapeville.

The cities of Atlanta, College Park, Decatur, East Point, and Hapeville were represented by counsel, as was also the Atlanta Federation of Trades.

In answer to the Commission's Rule Nisi the Georgia Power Company insists that it has failed by an average of $125,000 per year, for the past ten years, to earn 8 per cent return on what it claims to be the fair value of its gas property for rate-making purposes, and although it was shown that the company has earned in excess of 8 per cent return during the years 1926 and 1927, it is contended that no reductions should be made in its revenues at this time, but that it should be given an opportunity to make up for losses sustained during the average period of ten years during which time, little or no return was experienced.

Counsel for the municipalities other than Atlanta contended that in so far as the distribution of gas is of concern they are in fact a part of Atlanta and are entitled to whatever rate is prescribed for Atlanta. On the other hand, counsel for the city of Atlanta and the Atlanta Federation of Trades insisted that the rates in Atlanta should be on a lower level than in the other municipalities. Counsel for Atlanta also insisted that the rates should be reduced to provide a return on the value found by the Commission in its order effective January 1, 1922, at which time the present rates were prescribed, this value being $5,250,000.

[1] It is necessary that the Commission determine the value of the gas property of the Georgia Power Company on which it is entitled to earn a reasonable return. The order of the Commission effective January 1, 1922, prescribing the present rates, was enjoined by appeal to the United States District Court, alleging confiscation, it being urged that the value of $5,250,000, found by the Commission at that time, was unreasonably low and would work confiscation of the company's property. After due course the Federal Court adopted the Special Master's findings of value as of January 1, 1924, physical property $6,969,000, working capital $350,000, and going concern value $696,000, or a total value of property, used and useful in the public service, of $8,015,000. Due to changed operating conditions taking place from the time of issuance of the Commission's order and

the finding of value by the Special Master, the rates prescribed by the Commission were not found to be confiscatory, but the finding of the Master and approval of the Court was to set aside the Commission's value of $5,250,000, and established as physical value, as of January 1, 1924, $6,969,000, which is the value we will use in the present case.

The Commission resisted the efforts of the company to have the value previously fixed by the Commission changed to a higher value, but after a long drawn out hearing, entailing much labor and expense, an impartial tribune, of higher jurisdiction, fixed a value considerably in excess of that previously found by the Commission. Following the Master's report on the question of value, the finding was approved by his Honor, Judge Samuel H. Sibley, and it was the opinion of the Commission at the time, and it was accordingly held, that further effort to maintain the value previously found by the Commission would result in failure, and accordingly no appeal was entered. Therefore, it is our view that the value as found in the United States Court is a value that must be recognized by this Commission, and accordingly it is so held.

[2] It is not out of place to say here that on a value fixed by the Commission in 1922, as well as for some four years prior to 1922, the Commission prescribed rates for the gas property of this company, which, for a considerable time not only failed to yield a return of any value, but resulted in actual out-of-pocket loss in rendering the service. Experience demonstrated that for a given period of ninety days the company, on the rates then prescribed by the Commission, failed in the sum of approximately $1,100 per day to take in enough money to pay for the actual out-of-pocket cost of the service. No consideration of this loss is given in this case, although equity and good conscience would require that such be done, yet it has been established by the courts of last resort that amortization can not be forced and we will not exercise a discretion to make possible this authority.

Our investigation develops that from January 1, 1924, to December 31, 1927, additions and betterments have been made to the physical gas properties in the sum of $1,186,022.13. Add-

ing to this amount 10 per cent for going concern value, $815,502.21, and working capital $350,000, which is the amount allowed by the Court as of January 1, 1924, we now find the total fair value of the gas property of the Georgia Power Company, for rate-making purposes, as of December 31, 1927, to be $9,320,524.34.

It is our opinion that the present gas earnings of the Georgia Power Company at Atlanta and vicinity are excessive and should be reduced, and that such reductions should be made in such way as to properly distribute the cost of service among its gas customers, and that a form of rates be prescribed that all customers will pay alike for the amount of gas furnished, used and demanded.

[3] Counsel for Atlanta and the Atlanta Federation of Trades insist that the gas rate in Atlanta should be no higher than in Washington, D. C., or $1 per 1000 cubic feet. The record does not show whether the conditions surrounding the manufacture, sale, and distribution of gas at Washington, D. C., is comparable with Atlanta. We know by experience that the gas rates in one community are not comparable with gas rates in another community, unless all conditions surrounding the manufacture, sale, and distribution are the same. Where gas is sold in large volumes it can be produced and sold at a lower rate than where produced and sold in less volume, for the reason that the cost of production of 1000 cubic feet tends to decrease with volume and the cost of distribution and sale increase only slightly with the increased volume.

The gas plant at Washington, D. C., is what is known as a water gas plant. That is, the gas is manufactured from oil and is manufactured at a lower cost than from coal. Washington is located on the water front and, therefore, is enabled to secure its oil direct from points of production at a low cost. The Atlanta gas plant is a combination water gas and coal gas plant located in the interior where the cost of materials is greater than at Washington, D. C. During the year 1927 the plant at Washington served an average of 102,187 customers, or approximately 2½ times as many customers as the Atlanta gas plant. During the year 1927 the total sales of the Washington plant was 5,773,-

281 thousand cubic feet, or more than three and one half times the total sales of the Atlanta gas plant. It is, therefore, clear that the plant at Washington is, or should be, in a position to produce and sell gas at a lower rate than Atlanta.

Our investigation develops that, exclusive of industries there is an average of 3,300 customers using an average of less than 1,000 cubic feet of gas per month, and approximately 28,858 customers using more than 1,000 cubic feet per month, and in the suburban districts, exclusive of industrial customers, there is an average of 166 customers using less than 1,000 cubic feet per month and 2,676 customers using more than 1,000 cubic feet per month.

[4] The present rates are on what is known as the block system. That is, all cost of production, distribution, and maintenance of plant, including return on the value of the property, is distributed throughout the rate structure and the blocks are so constructed that the same rate applies to a customer using 10,000 cubic feet of gas as to a customer using 1,000 cubic feet of gas or less, although there are certain charges that accrue to each customer, regardless of whether he uses any gas at all. These charges consist mainly of bookkeeping, billing, meter reading, maintenance of distribution lines, etc. Our investigation shows this cost to be not less than $1 per month per customer, although under the present rate it is possible for a customer in Atlanta to pay the minimum charge of $1 and also secure approximately 650 cubic feet of gas. It, therefore, follows that customers using larger quantities of gas are paying a part of the cost of service that should be paid by all customers alike.

[5] Another class of service, if not out of date, is fast becoming so, is the service provided through prepay meters. This is one of the most expensive gas services rendered the public. That is, it is expensive to the consuming public, because of extra and useless cost in performing the service which in the end must be borne by the public. Five years ago there were approximately 13,000 prepay meters in use by the gas consuming public in Atlanta. Today there are less than 4,000 prepay meters in use. It is impossible to continue gas service through prepay meters, if the rates herein provided for are to be applied

without discrimination, unless an arbitrarily high flat rate should be fixed for this class of service, which would not be satisfactory, neither would it work for economy for those desiring such service. If the prepay meters were to be continued, under the new rates, it would result in the small users of this service receiving gas for less than actual cost, resulting in rank discrimination. To the extent that such discrimination would be reflected in the cost of the service to the larger consumers, it would mean that those of the larger consumers would have to pay a loss sustained on the prepay meter customers. It, therefore, follows that it is imperatively necessary that all prepay meters be displaced by the company as speedily as possible, straight meters being substituted therefor, the cost of all which shall be borne by the company, without the right on the part of the company to require the usual deposit against loss. This is necessary if the gas consuming public throughout the territory served by the company, as a whole, are to be put on absolute equality, hence the necessity of ordering the removal of all prepay meters.

[6] When the Commission prescribed the present rates effective January 1, 1922, we provided that the rates for the Atlanta suburban districts, viz.: College Park, East Point, Decatur, and Hapeville, should be 10 cents per 1,000 cubic feet higher than the rate prescribed at Altanta. Subsequent to that time conditions, with regard to distribution of gas to these communities, have greatly changed. East Lake at that time was included in the suburban district, but has since been incorporated with Atlanta and now enjoys the Atlanta rate. The intermediate territory between Atlanta and Decatur, also between Atlanta, East Point, College Park, and Hapeville has experienced much development.

Residences and business houses now fill the space of long stretches of vacant land that existed at that time. Conditions have changed within the bounds of the city limits of Atlanta, a fast growing city. The commercial growth of the city is forcing the residential section to new territory, thus requiring longer lines of distribution for gas, while the production plant must remain stationary. It is our opinion that justification for a higher rate in the suburban districts of Atlanta has passed and,

therefore, the rates which we are prescribing herein are to apply throughout the territory served by the Atlanta gas plant.

The system of rates which we are prescribing herein will have the effect of increasing the charges to a comparatively small number of customers, but considering the cost of service, these increases are fully justified. On the other hand, the rates prescribed will result in a considerable decrease in the company's gas revenues, predicated on 1927 operations.

[7] It is, therefore *ordered* that effective with the meter readings of January 1929, and until the further order of the Commission, the following schedule of rates shall be the maximum rates to be charged by the Georgia Power Company for gas served at Atlanta and all territory served by its Atlanta gas plant.

Rates.

Customers charge: $1 per month. Plus commodity charge of $1.40 per 1,000 cu. ft. for the first 1,000 cu. ft. per month, $1.10 per 1,000 cu. ft. for all over 1,000 cu. ft. per month.

Prompt payment discount: A discount of 10 cents per 1,000 cu. ft. shall be made on all bills paid within ten days of presentation. Minimum monthly charge: Customers charge. Contract period: One year.

VERMONT PUBLIC SERVICE COMMISSION.

RE CHESTER WATER & LIGHT COMPANY.

[No. 1386.]

RE READING LIGHT & POWER COMPANY.

[No. 1387.]

RE BROWNSVILLE ELECTRIC COMPANY, INCORPORATED.

[No. 1388.]

Consolidation, merger, and sale — Foreign corporation — Commission jurisdiction.

Unless it can be clearly shown that marked benefits will result from

the proposed transfer of all the assets of a local utility to a foreign corporation, the public good will best be promoted by keeping such utilities domestic, in view of the limited jurisdiction of the Commission over the capitalization and other features of foreign corporations doing business within the state.

[December 22, 1928.]

PETITION of an electric utility for authority to sell its assets to another company; petition denied.

Appearance: Homer L. Skeels, for the petitioner.

By the **Commission**: The petition of the Chester Water & Light Company, as amended, alleges in substance that the petitioner is a Vermont corporation owning and operating electric distribution and transmission lines and engaged in the business of supplying electric light and power to the inhabitants of said town and to the village of Chester for street lighting purposes. That Allied Vermont Utilities, Inc., a Delaware corporation, authorized to do business in Vermont and under the regulation of this Commission by a certificate of authority duly issued by this Commission, is engaged in the business of supplying electric light and power to the inhabitants of the towns of Pittsford, Mendon, and Chittenden. That petitioner has entered into an agreement with Allied Vermont Utilities, Inc., to sell and convey to the latter all of the assets including franchises of the petitioner, subject to the consent of this Commission and to the rights of creditors for $74,132.21 in principal amount of notes of the Allied Vermont Utilities, Inc., payable within one year from the date of issue, the latter to assume all debts, duties, and liabilities of the petitioner.

The petitions of Reading Light & Power Company and of Brownsville Electric Company, Inc., as amended, allege in substance that these petitioners are Vermont corporations owning and operating electric distribution and transmission lines and that the former is engaged in the business of supplying electric light and power to the inhabitants of Reading, Cavendish, West Windsor, Weathersfield, and that the latter is engaged in the business of supplying the same service to the inhabitants of the village of Brownsville and of West Windsor. Both of these petitions contain the same allegation regarding the status of

Allied Vermont Utilities, Inc., doing business in this state as stated above in regard to the petition of the Chester Company. The Reading Company and the Brownsville Company have each entered into an agreement with Allied Utilities, similar to the agreement between the Chester Company and the Allied Utilities, whereby the Reading Company is to sell and convey to Allied Utilities all of its assets etc. etc. for $18,937 and the Brownsville Company is to sell and convey to Allied Utilities all of its assets etc. etc. for $12,127.49, that the lines of Reading Company are within approximately eight miles of the lines of the Chester company and the lines of the Brownsville Company connect with the lines of the Reading Company. Each petition alleges that the sale and conveyance of the assets of the three selling corporations to Allied Utilities is desirable because such merger will avoid duplication of effort in buying and selling current, making reports to state authorities and result in obtaining more capital to finance extensions and additions to the selling companies which because of their small size separately have found difficulty in obtaining capital for these purposes. That this consolidation will result in greater efficiency and will not obstruct or prevent competition in the purchase or sale of any product or commodity, in the sale, purchase or manufacture of which such corporations are engaged and that these sales and the resulting merger will promote the good of the state.

From the evidence we find that for several years prior to September 3, 1927, J. E. Tennien, as lessee operating under a long term lease from the Rutland Railway Light & Power Company, conducted a small electric distribution business known as Chittenden Pittsford Distribution, in the towns of Pittsford, Chittenden, and Mendon and that this property was sold to Walter W. Taylor and his associates, among whom was Arthur S. Ives.

The law of this state did not require any action by this Commission in regard to this transfer of public utility property from one individual to other individuals. September 3, 1927, Messrs. Taylor, Ives and F. P. Benedict, all residents of New York city, formed a Delaware Corporation under the name of Chittenden-Pittsford Distribution, Inc., which became the owner of this dis-

tribution system. February 8, 1928, the name of this Delaware Corporation was changed to Allied Vermont Utilities, Inc. Under the provisions of Chapter 212 of the General Laws, this Commission issued its certificate of authority on September 15, 1927 to the Chittenden-Pittsford Distribution, Inc., and on March 23, 1928 this certificate was extended to April 1, 1929 in the name of the Allied Vermont Utilities, Inc. The only asset of this corporation is this small electric distribution system formerly owned by Tennien.

After the introduction of some evidence showing that this consolidation would result in reduction of overhead, more economical management, greater operating efficiency and the like, the Commission announced it was convinced that this consolidation would bring about a public benefit but inquired why this could not be accomplished through the medium of a domestic corporation. Under General Laws 4982 we have to find that the sale of all the assets of a domestic public utility corporation will promote the general good of the state. The record is silent as far as advancing any good reason for the sale of all the assets of these three Vermont corporations to a foreign corporation.

We are of the opinion that unless it can be clearly shown that marked benefits will result from a transfer of all the assets of an operating Vermont utility corporation to a foreign corporation, the public good will best be promoted by keeping such corporations domestic. We have complete jurisdiction over stock and bond issues of domestic utility corporations in order to prevent overcapitalization, General Laws 5061 VII. Our jurisdiction over the capitalization of foreign public service corporations operating in this state is either denied as to stock in our decision, Re New England Teleph. & Teleg. Co. No. 1033, February 27, 1924; or restricted to stocks or bonds issued on account of property or expenditures in this state, General Laws 5012, as amended by 1927, No. 88. On the general subject of allowing domestic operating corporations to be controlled by foreign corporations we refer to Re Ridgefield Electric Co. P.U.R.1925D, 317, and to Re Morgan & Wyman Electric Light & P. Co. P.U.R.1925D, 323. In these cases the New York Public Service Commission

refused to allow the same Messrs. Taylor and Ives we have before us in this case to accomplish the results they seek in these pending petitions.

Petitions are, therefore, denied.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

JAMES W. SHARP et al. AND BOROUGH OF NEWVILLE
v.
NEWVILLE WATER COMPANY.

[Complaint Docket No. 7324.]

Valuation — Water — Hydraulic pumping.

1. A water company using water power for pumping was held to be entitled to a valuation of the hydraulic power so used to the extent of the economies effected as compared with the expense of electric pumping, giving consideration to the cost of the dam and the other structures needed to produce such hydraulic power, as well as the interest on such investment, p. 322.

Valuation — Overhead — Water.

2. An allowance of 12½ per cent of the fair value of water utility properties was made for its general overhead expenses during construction, p. 324.

Return — Operating expenses — Officer's salary.

3. An amount of $1000 for salaries of president, secretary, and treasurer of a small water utility was held to be excessive where these offices were held by three women living in another city and manifestly did not impose burdensome duties, and the sum was reduced to $500, p. 325.

Depreciation — Amount allowed — Water.

4. An allowance of $570 was made for annual depreciation of a water utility having a plant value of $40,000, p. 325.

Return — Percentage allowed — Water.

5. Rates yielding a return in excess of 7 per cent on the fair value of a water utility were held to be excessive and were accordingly reduced, p. 325.

[December 21, 1928.]

COMPLAINT of water consumers against alleged excessive rates; complaint sustained.

P.U.R.1929B.

By the **Commission:** The Newville Water Company, a corporation of this state, formed and created on January 8, 1896, for the purpose of supplying water to the inhabitants of the borough of Newville, Cumberland county, filed, posted, and published on May 31, 1927, a tariff schedule designated P. S. C. Pa. No. 5, effective July 1, 1927, and superseding its tariff P. S. C. Pa. No. 4.

James W. Sharp with certain other citizens of the borough of Newville, consumers of the respondent water company, on June 30, 1927, prior to the effective date of the new tariff, filed this complaint alleging *inter alia* that the rates set forth in said tariff are "excessive, exorbitant, and unjust and unreasonable and are much higher than sufficient to yield a proper, fair and reasonable return upon the investments of the property of respondent." The answer of the respondent company denying the allegations of complainant was filed on July 16, 1927. By order dated October 11, 1927, the Commission granted the borough of Newville permission to intervene as party complainant. Numerous hearings fixed at times to accommodate the parties were held and the taking of testimony concluded on May 16, 1928. Briefs were filed and the case argued on October 29, 1928.

The Newville Water Company has outstanding $20,000 par value common capital stock and $20,000 par value 5 per cent bonds. All the capital stock is owned by Mrs. McCarthy and her three daughters who reside in Philadelphia. The three daughters are the officers of the company. The supply of water is obtained from a spring on land owned by the company. Water is pumped directly into the mains, the excess over demand going into an equalizing reservoir, thence it flows by gravity back into the mains as needed. The pumps are operated by water power supplied by dam on property of respondent. The company serves about three hundred consumers of which only two are metered. The population of the territory served is about fifteen hundred.

A finding of the fair value of the used and useful property of the respondent company as of July 1, 1927, and the gross annual revenue it is entitled to receive under such valuation based on the evidence and controlling principles laid down by the courts,

is necessary for proper determination as to whether the rates under attack are just and reasonable.

The evidence consists of estimates by complainant and respondent of reproduction cost new, reproduction cost new less depreciation of the property of the respondent company as of July 1, 1927, based on 1927 prices; annual allowance of operating expenses and depreciation and annual gross revenue under the rates fixed by tariff P. S. C. Pa. No. 5, with the testimony of the expert engineers in support and explanation of the said estimates. There is also included in the evidence the record of the Commission at Complaint Docket No. 1800 (the order in which fixed the fair value of the respondent company's property as of the date of the order); the annual reports filed by the company for years 1922 to 1926, inclusive, and testimony of certain witnesses relative to land values and general business conditions in Newville. The respondent estimates reproduction cost new $75,710.76 and less depreciation $67,474.05. The complainants estimate reproduction cost new $55,147.23, less depreciation $40,237.52. The fair value fixed by the Commission by report and order, Complaint Docket No. 1800, on January 7, 1919, is $28,000. The parties agreed on the items of used and useful property. The important difference between the two estimates of reproduction cost new and depreciated are pumping station and dam site, dam and forebay, distribution reservoir, pumping station building and equipment and accrued depreciation. On all the other items of property including overheads, the estimates are substantially the same.

[1] The tract of land on which the pumping station, dam, and source of supply are located contains about 17½ acres. This land, except a small part acquired in 1908 for $250, was purchased in 1896 for a consideration of $1,600. At the time of purchase there was located on the land an old mill used by respondent as its pumping station building and an old dam which was later rebuilt by the company. Some time subsequent to the purchase of the land the company paid $500 in settlement of dispute of riparian rights so that the total cost of the land including the mill building and the old dam was $2,350. The respondent's estimate of reproduction cost new and reproduction cost new

less depreciation of the land exclusive of the dam and pumping station building is $10,000 and the complainants' estimate first submitted $4,250, later reduced to $1,921. Both estimates are based upon the theory that the value of the land including water power is one-half of the capitalized value of the annual saving affected by the use of the water power instead of by purchased electric power. The courts have held that a water company using water power for the pumping of water is entitled to a valuation of the water power so used to the extent that there is an actual saving to the company by the use of such water power, considering, however, the cost of the dam and structure needed to produce such power and the interest on such investment.

In computing the saving of operation by water power over purchased electric power the respondent's engineer estimated the cost of operating the existing pumps by electricity and the complainants' engineer bases his computation on electric motor and pumps of sufficient capacity to adequately serve the consumers of the company. The different methods of computation account for the large difference in the saving of water power over purchased electric power. Giving consideration to the estimates of engineers for both complainants and respondent, the original cost and all pertinent facts, we find that the fair value of the land consisting of approximately 17½ acres on which is located the source of water supply, the pumping station, and water power (exclusive of the pumping station building and dam) is $2,350.

The respondent's estimate, reproduction cost new, of the dam and forebay is $5,576, depreciated $5,328.15 and the complainants' estimate new $4,212, depreciated $3,582.72. The difference between these two estimates is largely a difference in quantities. From all the evidence on this item of property we find that the fair value of the dam and forebay is $3,800.

The reproduction cost new of the equalizing or distribution reservoir is fixed by the respondent at $7,370, and by the complainants at $4,175, and as depreciated by respondent $7,280.96, by complainants $3,897.35. This reservoir was practically rebuilt in 1923, at a cost of $3,050, exclusive of original excavation.

It is the opinion of the Commission from consideration of all

elements of value applicable to this item that the fair value of the distribution reservoir is $4,880.

The respondent's estimate of the reproduction cost new of the pumping station building is $5,400, and depreciated $4,127.99. The complainants' estimate of this item is $1,500 reproduction cost new, depreciated $600. This building is a 2½ story structure of rough masonry, and weather boarded log. Only the first floor of the building is used by the company. The building was used originally as a mill and acquired by the company with the 17½-acre tract of land. Neither the respondent nor the complainants compute the reproduction cost of the building as it now exists. The respondent's estimate is the cost of reproducing a building of the same cubic contents, the complainants' estimate the cost of a building of sufficient size to conveniently house the company's pumping equipment. Giving full consideration to all elements of value pertinent to this item including the fact that the building is practically the same building with slight improvements, which was acquired by the company in 1896, we find the fair value of this item of property to be $750.

The reproduction cost new of the pumping station equipment is fixed by the respondent at $4,196, depreciated $2,732.41. The complainants' estimate is $1,885 new, and $867.10 depreciated. The complainants' estimate is not based upon the reproduction of the equipment as it exists and, therefore, cannot be considered. We fix the fair value of this item of property at $2,000.

[2] The items of general overheads consisting of engineering, etc., are computed by respondent on bases of 12½ per cent of the reproduction cost and by the complainants at 12 per cent of said cost. In our computation we have allowed about 12½ per cent for overheads. On the other intangible elements of value, namely, going concern value, cost of obtaining money and working capital, the parties are in agreement.

The respondent using the 4 per cent sinking-fund method, computes the accrued depreciation at $8,236.71, or about 14 per cent of the reproduction cost new. The complainants use the straight-line method and compute it at $14,809.71, or about 33 per cent of reproduction cost new. Our total allowance on

accrued depreciation is slightly in excess of the complainants' estimate.

[3–5] In accordance with the foregoing specific findings and all pertinent facts and evidence, we find that the value of the used and useful property of the Newville Water Company as of July 1, 1927, to be $40,000.

Real estate:	
Pumping station and dam (land)	$2,350
Reservoir (land)	300
Intake	405
Dam and forebay	3,800
Reservoir	4,880
Pumping station building	750
Chemical treatment plant	130
Pumping station equipment	2,000
Distribution system	17,000
Overheads	3,950
Going concern	2,700
Cost of obtaining money	1,400
Working capital	300

The estimate of the probable annual gross revenue which the company will receive under the rates complained of, and based upon six months actual receipts is $6,275. The annual operating expenses for the year 1926 were approximately $1,950. Included in these operating expenses were salaries of president, secretary and treasurer, amounting to $1,000. These officers are three women who live in Philadelphia. Manifestly the duties of the officers' time devoted to them do not warrant such relatively large salaries. We allow the sum of $500 for officers' salaries.

The respondent's estimate of annual allowance for depreciation is $570, and complainants' $424. We accept the respondent's estimate.

The annual gross revenue under the valuation fixed by the Commission, namely, $40,000, which respondent company is entitled to is $4,820, computed as follows:

7 per cent return on value $40,000	$2,800
Annual depreciation	570
Annual operating expenses	1,450
Total	$4,820

This annual gross revenue ($4,820) is considerably less than the annual gross revenue under rates fixed by the company's tariff P. S. C. Pa. No. 5, and approximately the revenue which

the company collected under its former rates fixed by P. S. C. Pa. No. 4.

An order will issue sustaining the complaint and carrying the above findings into effect. [Order omitted.]

MAINE PUBLIC UTILITIES COMMISSION.

RE ASHLAND ELECTRIC LIGHT & POWER COMPANY et al.

[U-1023.]

Consolidation, merger, and sale — Desirability of a merger.

1. Upon application for authority to approve a consolidation which appears to be in no way inimical to the public interests, the Commission should respect the judgment of those who own and control the properties affected in the absence of reasons impelling a contrary view, p. 326.

Consolidation, merger, and sale — Factors for consideration.

2. Principles governing the advisability of a merger of utility companies are the legal right of the new purchaser to acquire and hold the properties affected, the result of the transfer in the territory affected as well as the effect on the general public interests, p. 333.

[November 16, 1928.]

APPLICATION of electric companies for authority to consolidate; granted.

Appearance: Honorable Robert Hale, for petitioners.

By the **Commission**: This petition has its origin in the desire of stockholders of the several companies concerned to unite the petitioning companies with the Gould Electric Company.

Upon the filing of the petition, after due notice, public hearing was held at Presque Isle on October 24, 1928, followed by subsequent hearings at Augusta on October 31, 1928 and November 8, 1928.

[1] The petitioners represent that the union of the various companies into one organization would result in desirable economies and could in no way be inimical to the public interests. Such mergers have been before this Commission on numerous occasions and we recognize that in the absence of reasons im-

pelling us to a contrary view, we should respect the judgment of those who own and control such properties, especially in view of the provisions of § 40 of Chap. 55, Revised Statutes, as amended, which prescribe the governing conditions. The properties which we are now considering we find necessary and/or useful in the performance of duties to the public. These several corporations serve the northern part of our state in the counties of Aroostook and Piscataquis. In the interest of clarity of thought, let us record the following facts concerning them:

Name	Year Incorporated	Private and Special or General Law
Ashland Electric Light and Power Company	1922	P. & S. Laws, 1921, Chapter 109
Cyr Electric Company	1923	General Law
Easton Electric Company	1908	General Law
Fort Kent Electric Company	1911	General Law
Katahdin Electric Company	1923	General Law
Maple Grove Electric Company	1909	P. & S. Laws, 1909, Chapter 204
Mapleton Electric Company	1914	General Law
Milo Electric Light & Power Company	1898	General Law
Prestile Electric Company	1923	General Law
Sherman Electric Company	1924	General Law
Stockholm Light & Power Company	1922	General Law
The Westfield Electric Company	1916	General Law

The plan adopted by the corporations to effectuate their purposes includes exchanging common stock of the Gould Electric Company for an equal amount of the outstanding common stock of each selling company, and additively the assumption by the Gould Electric Company of all the outstanding proper debts and liabilities of such selling company. In this way the price is determined to be paid to each company for its properties and franchises, with three exceptions to be presently noted. It will be seen that the consummation of this plan will result in outstanding additional stock of the Gould Electric Company equal in par value to the aggregate amount of stock of the several companies. The debts assumed by the Gould Electric Company are within the provisions of § 37 of Chap. 55 of the Revised Statutes, as amended, and have been carefully checked by the chief accountant of the Commission, and in each instance the general manager of the Gould Electric Company has testified that the property for which such debts were incurred has been integrated

with the property of the constitutive companies. Since these latter companies might properly present such expenditures as a basis for the issue of capital securities, no objection appears, upon the assumption of such debts by the Gould Electric Company, to our consent for the issue of notes by the Gould Electric Company, whose proceeds shall be applied to the payment of such debts. Three exceptions above noted appear to the course we have outlined, and these are the Stockholm Light & Power Company, the Westfield Electric Company, and the Cyr Electric Company.

In the case of the Stockholm Light & Power Company, it is proposed to pay to the selling company the sum of $1,550 and to assume its outstanding obligations amounting to $2,755.76, and additions to property not covered by debt amounting to $8,500. This makes a total payment of $12,805.76 for property, whose book value, according to the returns to this Commission on December 31, 1927, was $14,324.43.

In the case of the Westfield Electric Company, a corporation organized under the General Law in 1916, we find no stock has ever been issued by authority of this Commission, and we shall exclude from our further consideration the affairs of this company. Upon proper motion or new petition addressed to the Commission, showing a different state of affairs, the issues presented in respect of the Westfield Electric Company will be considered by the Commission.

The Cyr Electric Company was at one time not considered a public utility, and such stock as was issued may have been issued under those conditions. No evidence is offered in respect of this that justifies its inclusion with the other companies. If it had duly qualified stockholders, upon showing of such fact, the difficulty now presented might be obviated.

To summarize the result of our study in this case, with the exceptions of the Stockholm Light & Power Company, the Westfield Electric Company, and the Cyr Electric Company, we find the records and evidence appear to substantiate the following conclusions: [Table omitted.]

In respect of the petitioning corporations, namely the Easton Electric Company, Maple Grove Electric Company, and Maple-

ton Electric Company, whose issued stock has never been authorized by this Commission, let it suffice to say that these corporations were organized prior to the institution of this Commission, and we shall assume for the purpose of this case that such stock as has already been issued was issued agreeably to the law controlling at the time of such issue.

The petition of the Gould Electric Company contemplates the issue of its capital stock in amount of $312,800, for the purpose of making the exchange contemplated by the plan before us. In addition the Gould Electric Company desires to issue its promissory notes to mature in three years bearing interest at the rate of 6 per centum per annum, for the purpose of discharging the indebtedness, which we have previously discussed, to be assumed by said Gould Electric Company.

The detail is as follows: [Table omitted.]

[2] On numerous occasions this Commission has declared the principles governing in this class of cases; these are:

"(1) The legal right of the purchaser of the new corporation or utility to acquire and hold the property affected by the consolidation, merger, or sale.

(2) The probable effect of the consolidation, merger, or sale, with reference to service in the territory affected; and

(3) The probable consequences of the sale, so far as the interest of the public is concerned, with reference to rates, and any other particulars by which the public might be affected, including,

(a) Petitioner's capacity to serve its present territory.

(b) To meet its obligations to present securities holders.

(c) Improvement of service, diminution of cost of management and operation.

Re Bar Harbor & U. River Power Co. (anno.) P.U.R.1923C, 302; Re Bridgton Water & Electric Co. U-657; Re Bangor R. & Electric Co. P.U.R.1925E, 705;" Re Buckfield Water, Power & Electric Light Co. P.U.R.1928C, 306, 308.

Nothing appearing in the instant case incongruous with these principles, we shall not withhold our consent. It appears that proper corporate action has been taken by the respective corporations to effectuate their purposes.

P.U.R.1929B.

MAINE PUBLIC UTILITIES COMMISSION.

MILO WATER COMPANY

v.

ITSELF.

[F. C. 769.]

Rates — Commission jurisdiction — Increase in taxes.

1. A Commission has jurisdiction and authority to adjust rates of a water company which have become inadequate by reason of an increased tax assessment by the town in which it is operating, p. 331.

Apportionment — Rate adjustment — Municipal tax.

2. A relative burden imposed upon a municipality and the other customers of a water company was not changed by the requirement of additional revenue because of the imposition of additional taxes, and such burdens were distributed as fairly and equitably as possible among the various customers, including the municipality, p. 333.

[October 26, 1928.]

PETITION of a water company for increased rates for service; rates adjusted.

Appearances: Ernest L. McLean, for Milo Water Company; John E. Nelson, for municipal officers of the town of Milo; Henry J. Hart, for Bangor & Aroostock Railroad Company.

By the Commission: Milo Water Company, a public utility engaged in furnishing water for domestic, sanitary, and municipal purposes in the town of Milo, makes complaint against itself and alleges that its schedule of rates now in effect is insufficient and inadequate and does not provide a revenue sufficient to pay the necessary expenses of operation and yield the fair return to which the company is entitled. On this complaint a public hearing was held at the selectmen's office in the town of Milo, on September 18, 1928, at nine o'clock in the forenoon. Notice of said hearing was proved to have been given as ordered and the appearances were as indicated.

The matter of the rates of Milo Water Company was before this Commission in F. C. No. 641, complaint of the Milo Water Company against itself alleging inadequacy of rates, on which complaint a hearing was held at Milo, on October 20 and 21, 1926. The case at that time was ably presented to the Com-

mission by learned counsel who represented the several parties in interest and offered very considerable amount of testimony covering the several points at issue, including a valuation of the petitioner's property made by engineers representing the company. A valuation showing the reproduction cost of the property and the reproduction cost less depreciation was also made by the engineering department of the Commission and presented as a part of the evidence in the case. Briefs were filed by counsel and the Commission, after having given this matter much study, issued its decree dated September 30, 1927, under which the existing schedule of rates, effective October 1, 1927, was established.

[1] The company's plant was constructed and has been operated pursuant to the terms of a contract made between the company and the town of Milo, dated May 1, 1909. This contract provides, *inter alia,* for the payment of certain amounts for hydrant rental and "for water for the purposes specified in Item 7 of this contract (filling reservoirs, flushing sewers, water used for school houses, etc.) such further sum each year as shall equal the amount of tax, if any, assessed against said company by said town of Milo during said year." The rates established by this contract remained effective, except as modified by the Commission in its decree F. C. No. 277 dated December 31, 1920, and agreeably to the provisions of said contract no tax was assessed by the town of Milo against Milo Water Company, or if assessed was abated by the town so that, as a matter of fact, no municipal taxes were paid to the town of Milo by the water company. This was the situation so far as taxes were concerned at the time of the hearing in October, 1926, as well as at the time the decree was issued, September 30, 1927. The Commission stated in the latter decree:

"We shall assume that the water company and the town of Milo will continue to be guided by the terms of the present contract except as modified by this and former decrees of this Commission."

On this assumption we established rates which, in our opinion, would produce the necessary revenue.

On April 1, 1928, the town of Milo assessed against the prop-

erty of the water company a tax of $4,975.43. This, however, included the sewer plant. The amount of the tax assessed against the water plant, with which we are concerned in the discussion of this case, amounted to $3,837.93. This tax, when assessed against the water company, becomes a part of its operating expenses, for the payment of which revenue must be provided through rates.

Exhibit No. 4 offered by the company indicates that, aside from the increases required by reason of municipal taxes, the present revenues are insufficient for the company's requirements. This branch of the case, however, was not pressed at the hearing and we do not feel justified at this time in making any changes in the rates except such as may be necessary to meet the increases occasioned by the municipal tax assessment, especially in view of the fact that so short a time has elapsed since the present rate schedule became operative.

The immediate question at issue is, therefore, how such additional revenue changes made necessary by the tax assessment can be most equitably and justly provided so that the entire operating expenses of the company, including the additional burden occasioned by the tax assessment may be distributed as fairly as possible among the company's several classes of customers.

The learned counsel for the town of Milo has filed a motion that the pending proceedings be dismissed for want of jurisdiction of the Commission in the premises on the ground:

"that the municipal officers of Milo were under a legal obligation to assess taxes against the property of said water company each year; that under the terms of said contract said water company must pay such taxes as may thus be assessed and recover the same back by an action at law, if necessary; that the assessment and recovery back of such taxes does not constitute a matter affecting rates; and that if said contract is still in full force and effect, as claimed, this Commission is without jurisdiction in the premises, and the granting of this petition would result in the making of it possible for the water company to recover back the taxes and also to recover from the water

takers an operating expense equal in amount to the taxes thus recovered."

This motion must be denied. Assuming that the water company might recover money equivalent to the amount paid for such taxes by an action at law, that fact does not, in our opinion, deprive this Commission of its jurisdiction over a matter affecting the rates to be charged by the water company. It is well-settled in this state that the amount paid for taxes is a part of the utility's operating expense and as such must be provided for in its revenues which are obtained through rates paid by its various customers. The Maine case supports this position; see In Re Caribou Water, Light & P. Co. 121 Me. 426, 431, P.U.R.1923A, 140, 117 Atl. 579.

The authority and jurisdiction of the Commission in cases affecting rates established by contract is also well-settled in this state. In Re Searsport Water Co. 118 Me. 382, P.U.R. 1920C, 347, 108 Atl. 452.

[2] We have considered carefully the relative requirements of the various classes of customers in allocating to the municipal hydrants, as we shall do in the order and decree in this case, the entire burden of the additional revenue made necessary by the tax assessment. As hereinbefore stated, the schedule of rates made effective by our former decree was established after giving due consideration and weight to the fact that at that time no municipal tax was being paid to the town by the water company. The customers of the company, other than the municipality in its payment for hydrant rental, are paying, therefore, under the existing schedule, a larger proportion of the actual total cash revenues of the company than would have been the case had a municipal tax at that time been assessed against the company. The actual amount paid by the town for hydrant rental under the present schedule is about fifteen per centum of the gross revenue of the company, whereas the additional investment made by the company to provide fire protection for the municipality would equitably require a payment for that purpose of approximately thirty to thirty-five per centum of the gross revenue. Stated otherwise, the cash payment made by the town for hydrant rental under the existing schedule, plus

an amount equivalent to a reasonable tax assessment represent the share of the total burden which is now being borne by the municipality on account of its fire protection service. When, therefore, we allocate to hydrant rental as we shall do in this case, the entire additional revenue required by the imposition of the tax, the relative burdens imposed upon the municipality and the other customers of the company are not changed. Those burdens are now distributed, and will be distributed under the order and decree in this case, as fairly and equitably as possible among the various customers and classes of customers, including the municipality. Although the amount to be paid for municipal fire protection, both in the existing schedule of rates and in the schedule as modified by this order, is ascertained on a per hydrant basis, that fact is merely a convenient method of determining what the proper gross amount to be paid for the fire protection service shall be. The company is affording certain protection within the territory covered by the municipal hydrants. If more hydrants were installed within that territory, the cost to the company for fire protection services would not be increased proportionately to the number of new hydrants installed. We shall, for this reason, increase the per hydrant rate of the existing hydrants only, this being the number on which the present revenue requirements are based. If additional hydrants be installed, the per hydrant rate therefor will be fixed at $60 which, in our opinion, will be sufficient to reimburse the company for the extra expense that would be incurred in furnishing such additional hydrant service.

It is therefore *ordered, adjudged* and *decreed*

1. That the present rate of $60 per hydrant per year charged by the Milo Water Company to the town of Milo for municipal service, is unreasonable and inadequate.

2. That in lieu of said rate, said Milo Water Company be and it hereby is, permitted to file and make effective on November 1, 1928, the following rates:

For the total number of public hydrants in service as of the date of this order, each hydrant $140 per year

For each additional public hydrant hereafter installed ..... $60 per year

OHIO SUPREME COURT.

DETROIT-CINCINNATI COACH LINE, INCORPORATED

v.

PUBLIC UTILITIES COMMISSION OF OHIO.

[No. 21067.]

(— Ohio St. —, 164 N. E. 356.)

Interstate commerce — Revocation of certificate — Busses.

Where a common carrier by motor vehicle operating over state highways in interstate commerce habitually violates reasonable and lawful rules and regulations of the Public Utilities Commission of the state, carries passengers in intrastate service without a certificate authorizing the same, and violates the laws of the state regulating the speed of motor vehicles on the state highways, all such violations being committed in such manner and to such extent as would justify a revocation of the certificate of an operator of motor vehicles in intrastate commerce, the certificate theretofore granted to such operator by the Public Utilities Commission to operate as a common carrier in interstate commerce may be revoked.

[December 12, 1928.]

Headnote by the COURT.

ERROR to Public Utilities Commission. COMPLAINT by an interstate motor utility from order of the State Commission revoking its certificate of convenience and necessity; action of Commission affirmed. For Commission decision, see P.U.R. 1928C, 571.

Appearances: Samuel I. Lipp, of Cincinnati, for plaintiff in error; E. C. Turner, Attorney General, and A. M. Calland, of Columbus, for defendant in error.

Marshall, C. J.: The Public Utilities Commission of Ohio granted to the Detroit-Cincinnati Coach Line, Inc., certificate No. 2749 to operate an interstate service between the Ohio-Michigan state line and the Ohio-Kentucky state line, the termini of the coach line being Detroit, Michigan, and Covington, Kentucky. The certificate was "granted for interstate operations only." Thereafter complaints were filed by competing transportation lines operating in the state of Ohio, seeking the

revocation of the interstate certificate, upon the ground that the coach line company, having been certified to do an interstate service only, was performing an intrastate service without having obtained a certificate of public convenience and necessity from the Public Utilities Commission for such intrastate service; that the coach line company violated various rules and regulations of the Public Utilities Commission, and violated the speed laws of the state of Ohio.

Hearings were had, and the Public Utilities Commission found:

"That the violations alleged by the complainants are fully substantiated; . . . that the Detroit-Cincinnati Coach Line, Inc., under interstate certificate No. 2749, has performed an intrastate service without having first obtained a certificate of convenience and necessity from this Commission for intrastate operation as required by § 614—88, General Code. . . . That the said respondent has at various times violated the laws of Ohio and the rules of this Commission in operating its vehicles at an excessive and dangerous rate of speed. . . . The respondent has persistently violated the speed laws and has been the subject of criminal prosecution and convictions. These official interdictions, however, have so far accomplished nothing in the way of reformation of their subject. . . . Ordered, that certificate No. 2749 be, and hereby it is, revoked. It is further ordered that the Detroit-Cincinnati Coach Line, Inc., desist from all operation within the state of Ohio under the said certificate within fifteen days from the date of this order." (P.U.R.1928C, 571, 573, 576.)

The findings of the Public Utilities Commission are sustained by the evidence and would justify a revocation of the certificate of the plaintiff in error were it not for the fact that the certificate authorizes, and concededly the plaintiff in error is engaged in, an interstate service. The provisions of § 8 of article 1 of the Constitution of the United States do not prohibit a state from enacting, promulgating, and enforcing reasonable, nondiscriminatory laws, rules, and regulations pertaining to interstate commerce service through, into, or out of its territory, or exempt persons so engaged from the pains and penalties of a violation of

such laws, rules, and regulations, so long as such penalties do not amount to a prohibition of interstate commerce or impose an unreasonable burden upon interstate commerce. Packard v. Banton, 264 U. S. 140, 68 L. ed. 596, 44 Sup. Ct. Rep. 257; Morris v. Duby, 274 U. S. 135, 71 L. ed. 966, 47 Sup. Ct. Rep. 548; Hendrick v. Maryland, 235 U. S. 610, 59 L. ed. 385, 35 Sup. Ct. Rep. 140; Kane v. New Jersey, 242 U. S. 160, 61 L. ed. 222, 37 Sup. Ct. Rep. 30; Clark v. Poor, 274 U. S. 554, 71 L. ed. 1199, P.U.R.1927D, 346, 47 Sup. Ct. Rep. 702.

It was not the purpose of the Public Utilities Commission to prevent the coach line from operating motor vehicles in the state of Ohio in interstate commerce, and this is evidenced by the fact that the Commission granted certificate No. 2749 to operate in this state in interstate service. The only purpose of the Commission was to impose reasonable regulations upon that service. The regulations sought to be imposed were the usual and uniform regulations which have been applied to intrastate service and which have repeatedly been held by this court to be reasonable and lawful as applied to intrastate operations. If the order of the Commission in this case were arbitrary or discriminatory, or if the regulations imposed and which are shown to have been violated by the coach line were unreasonably burdensome upon interstate commerce, the coach line would not be bound to conform to them, and the order of the Commission would, therefore, have to be reversed. That the legislature of Ohio and the orders of the Public Utilities Commission may impose upon interstate commerce the same regulations in all essential respects as are imposed upon intrastate operations cannot be doubted.

The final authority in determining the power of the Commission in such matters must necessarily rest with the Supreme Court of the United States. That court has spoken on this subject in no uncertain terms in Sprout v. South Bend, 277 U. S. 163, 72 L. ed. 833, 48 Sup. Ct. Rep. 502, decided May 14, 1928. In that case it was declared that the following requirements imposed by state authorities are reasonable: First, a requirement to carry liability insurance; second, nondiscriminatory regulations for the purpose of insuring the public safety and convenience, such as a license fee, provided same is no larger in amount

than is reasonably required to defray the expenses of administering such regulations; third, a reasonable charge as a fair contribution to the cost of constructing and maintaining the public highways; fourth, the requirement to file contracts providing adequate insurance for the payment of judgments recovered for certain injuries resulting from operation. All these requirements were held not to be unreasonable burdens on interstate commerce when applied to interstate carriers. The only requirement held not to be lawful in that case was the imposition of an occupation tax. Each and every one of these requirements was discussed at length and with elaborate citation of former decisions of the United States Supreme Court. It is true that in the same case it is stated: "The privilege of engaging in such commerce is one which a state cannot deny." In support of that statement the court cites Buck v. Kuykendall, Director of Public Works, 267 U. S. 307, 69 L. ed. 623, P.U.R.1925C, 483, 45 Sup. Ct. Rep. 324, 38 A.L.R. 286; Bush & Sons Co. v. Maloy, 267 U. S. 317, 69 L. ed. 627, P.U.R.1925C, 488, 45 Sup. Ct. Rep. 326, 327. We are of the opinion that the court meant by that language that the privilege cannot be arbitrarily denied. We find nothing in that opinion to indicate that a privilege granted upon nondiscriminatory and reasonable terms and conditions might not be revoked when the motor company arbitrarily, unreasonably, and flagrantly violates the regulations and refuses to conform to the terms and conditions. In order that we may properly interpret the language of the court we should examine the authorities cited in support. The Buck and Bush Cases, *supra,* are quite similar, and decided that a law which prevents common carriers for hire from using highways by auto vehicles without first obtaining a certificate of public convenience and necessity is primarily not a regulation to secure safety on highways, or to conserve them, but a prohibition of competition, and, therefore, a violation of the commerce clause of the Federal Constitution, as well as defeating the purpose expressed in the acts of Congress giving Federal aid for construction of interstate highways.

To determine questions of public convenience and necessity as a prerequisite to granting a certificate to an interstate operation

is one thing, but where a certificate is granted to an interstate operation, without any inquiry whatever into the question of public convenience and necessity, the imposition of reasonable regulations and charges upon such interstate operation as a condition to its grant or continued use is another and very different thing. We find nothing in the Buck and Bush Cases, *supra*, limiting the power of state agencies to impose reasonable regulations and charges upon interstate operations which do not discriminate in favor of intrastate operations; neither do we find any expression in either of those cases denying the right to revoke an authority previously given to an interstate operator for a defiant refusal to conform to such reasonable regulations and charges. In Clark v. Poor, 274 U. S. 554, 71 L. ed. 1199, P.U.R.1927D, 346, 47 Sup. Ct. Rep. 702, the Supreme Court of the United States affirmed a decision of the district court of Ohio, wherein it was declared that a state regulation providing that, before operating over the state highways, a common carrier by motor shall apply for and obtain a certificate or permit therefor from a State Commission and shall pay an extra tax for the maintenance and repair of the highways and for the administration and enforcement of the laws governing their use, is constitutional though applied to carriers engaged exclusively in interstate commerce.

In the opinion in that case the court again dealt with the question of regulation by the State Commission, and approved the right to impose a license fee and a tax for maintenance and repair of highways, and also upheld the right of the state to require that the carrier apply for and obtain a certificate. The supreme court does not in any of these cases, or in any other cases that we are able to find, endeavor to compel states to submit to the use of highways without conforming to reasonable conditions.

This court has repeatedly decided that the Commission may and should subject such interstate operator to the usual conditions and regulation, with the usual attendant charges and taxes, that are imposed upon operators of an intrastate route. If these conditions and regulations are such as to interfere with or to impose unreasonable burdens upon interstate commerce, they can

be voided by the Federal Courts in a proper proceeding, and should be modified by our own State Commission. It is even the duty of this court to reverse an order of the Commission which interferes with or imposes unreasonable burdens upon interstate operations. This proceeding is not of that character. It is not claimed that the charges and regulations are unreasonable or burdensome. The issue tried before the Commission was whether or not the operator is disobeying and disregarding them altogether. This is an issue of fact which the Commission has decided, and the findings of the Commission are sustained by the evidence. The Commission has found that the operator has flagrantly violated the laws of the state and the regulatory rules of the Commission. The right of Congress to regulate commerce between the states, and the right of state governmental agencies to safeguard that right, must necessarily be subject to the further condition that the operator while carrying on an interstate operation within this state will respect and obey the valid laws of the state regulating intrastate operators of similar character. All these matters are clear and undoubted. The only problem presented by this proceeding is whether the state authorities can enforce that obedience by the extreme process of revocation of the interstate right altogether. The persons operating motor vehicles upon state highways as common carriers in interstate commerce are guaranteed against unreasonable interference and unreasonable burdens, but this immunity does not justify such persons in becoming outlaws or abusing franchises thus given to them. We are of the opinion that the right of revocation and prohibition is necessary to the maintenance of a proper respect for state laws and state institutions. We are further of the opinion that such revocation upon such grounds does not offend against the provisions of section 8 of article 1 of the Federal Constitution, though it of course should not be resorted to except in aggravated cases. The Commission has found this to be an aggravated case, and its order should be affirmed.

Day, Allen, Kinkade, Jones, and Matthias, JJ., concur.

P.U.R.1929B.

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION.

E. C. RIEGEL

v.

WASHINGTON GAS LIGHT COMPANY et al.

[Order No. 741, Formal Case No. 22.]

Payment — Right of utility to require a deposit.

1. A public utility has the right to require an advance payment, or deposit to guarantee payment, in view of the fact that losses due to uncollectible accounts are treated as deductions in determining the amount available to pay a return, thereby burdening good customers with the bills of delinquent customers, p. 344.

Payments — Deposits to secure payment for measured service.

2. A deposit is a more practical method of securing payment for a measured service than full prepayment as a guarantee against losses from uncollectible accounts, p. 344.

Service — Discontinuance — Failure to establish credit.

3. The action of a gas company and an electric company in discontinuing service to a customer refusing to answer questions designed to establish his credit or to pay a deposit is not unreasonable, p. 344.

Payment — Deposit — Amount.

4. Rules and regulations of utilities regarding deposits to secure payment for service should provide some measure of the deposit to be required, p. 345.

[January 28, 1929.]

COMPLAINT by a consumer against the practices of gas, electric, and telephone utilities in requiring deposits from consumers before connecting service; amendments to company rules ordered.

Amending Orders Nos. 148 and 657.

By the **Commission:** A formal public hearing was held before the Commission on December 19, 1928, to consider the practice of utility companies in requiring deposits from consumers before making service connections. This matter originated by a complaint lodged with the Commission by E. C. Riegel, Director of the Consumers Guild. This complaint was made against the Washington Gas Light Company because of their having disconnected service at Mr. Riegel's home when he refused to make a deposit.

The Commission finds that E. C. Riegel wrote to the Wash-

ington Gas Light Company and the Potomac Electric Power Company, requesting them to give him service at his home, 806 Potomac Park Apartments, that service was given, that Mr. Riegel refused to answer questions and refused to make a deposit guaranteeing payment of his bill, and thereupon service was disconnected by the companies.

That E. C. Riegel requested the Chesapeake & Potomac Telephone Company to install a telephone in the offices of the Consumers Guild, 26 Jackson Place, refused to make a deposit or give any references and the Chesapeake & Potomac Telephone Company thereupon refused to install a telephone.

That the rule of the Potomac Electric Power Company in regard to security for payment of bills is contained in Rule 2 under "General Terms and Conditions" in their rate schedules filed with and approved by this Commission. Said Rule 2 reads as follows:

"The consumer, on demand by the company, agrees to give a guarantee satisfactory to the company, or deposit with the company a sum that the company may deem sufficient to guarantee the payment of bills for service furnished under this contract."

That service is given by the Potomac Electric Power Company pending adjustment of the credit requirements and interest is paid by that company on deposits held by it at the rate of 5 per cent per annum.

That the Chesapeake & Potomac Telephone Company has on file with this Commission in its tariffs the following rule known as P. U. C. — D. C. No. 2, effective January 20, 1927:

"Applicants for telephone service are required to pay service connection charges at the time application is signed.

Those applicants whose financial responsibility is not a matter of general knowledge or who are not connected in a substantial way with a firm, corporation, or other concern of established credit, may also be required to make an advance payment equal to at least one month's rental, the latter payment being applied to any indebtedness under the contract, including charges for both local and toll messages.

Applicants for service unable to establish a satisfactory credit

rating with the telephone company, or existing subscribers whose credit rating has become impaired, may be required to make a suitable cash deposit, to be held as security for the payment of bills for telephone service; the amount of such deposit shall not, however, exceed the amount of charges for telephone service which it is estimated will accrue for a period of two months. When service is terminated, any balance of the amount deposited remaining after deduction of all sums due the telephone company will be returned to the subscriber, or the deposit may be returned at any time previous thereto, at the option of the telephone company. Interest at the rate of 6 per cent per annum will be paid on all such deposits.

The telephone company reserves the right to refuse service to applicants who are indebted to the company for service previously rendered, until the indebtedness is satisfied."

That the above rule of the telephone company was an amendment of a rule formerly in effect, the amendment having been in conformity to a suggestion contained in an opinion of the Interstate Commerce Commission in Huntington Engineering Co. v. Chesapeake & P. Teleph. Co. 112 Inters. Com. Rep. 377, 379, 380, in which the Interstate Commerce Commission said:

"Defendant is within its rights in requiring a cash deposit of subscribers who arbitrarily or otherwise fail to pay their bills promptly. . . .

"It appears that defendant might reasonably require a deposit equal to, but not in excess of, the sum of accrued charges for any two successive months during the 12-month period next preceding the date the services were withdrawn on account of nonpayment or failure to pay promptly."

The Chesapeake & Potomac Telephone Company has had in its tariffs since December 1, 1913, rules similar to the one quoted above. This company does not give service until a deposit has been made or is waived by the company.

The Washington Gas Light Company and the Georgetown Gas Light Company have had provisions in their schedules filed with this Commission in 1913, reserving the right to require security for the payment for gas consumed or a deposit of money in advance, to secure themselves against loss.

In practice the Washington Gas Light Company and the Georgetown Gas Light Company require a customer who is not the owner of property to make a deposit equivalent to a bill for two months' consumption. These companies pay 5 per cent per annum on the deposit for the time held.

[1, 2] The right of public utilities to require advance payments or deposits to guarantee payment is so well established that its justification requires merely the citation of the words of the Supreme Court of the United States in the case of Southwestern Teleg. & Teleph. Co. v. Danaher, 238 U. S. 482, 59 L. ed. 1419, P.U.R.1915D, 571, 575, 35 Sup. Ct. Rep. 886, L.R.A.1916A, 1208:

"It uniformly is held that a regulation requiring payment in advance or a fair deposit to secure payment is reasonable, and this is recognized in the brief for the plaintiff where it is said that to protect themselves against loss telephone companies 'can demand payment in advance.' If they can do this, it is difficult to perceive why the more lenient regulation in question was not reasonable."

Losses due to uncollectible bills are treated as a deduction in determining the amount available to pay a return on the value of the property of utilities; consequently, those who pay their bills, in effect, also pay the bills of those who fail to pay. It is, therefore, in the public interest that losses on bad accounts by utilities be held at a minimum. Guarantee against any such losses is only provided by full prepayment, but in the case of metered or measured service such prepayment is difficult to carry into effect and would be more of an inconvenience than the payment of a deposit as a condition to giving service.

[3] The action of the Potomac Electric Power Company and the Washington Gas Light Company in disconnecting service furnished E. C. Riegel upon his refusal to answer questions designed to establish his credit or to pay a deposit, and the action of the Chesapeake & Potomac Telephone Company in refusing to give service to the Consumers Guild because that organization refused to answer any questions or pay a deposit was not unreasonable.

[4] The Commission is of the opinion, however, that the rules of the Washington Gas Light Company, the Georgetown Gas Light Company, and the Potomac Electric Power Company in force cited above should provide some measure of the deposit to be required. It appears from the evidence that the practice of these companies is to require a deposit estimated to be equivalent to two months' bill for the reason that a consumer will have had that length of service before the company can disconnect his meter.

It is, therefore, *Ordered*

(1) That the Washington Gas Light Company, the Georgetown Gas Light Company, and the Potomac Electric Power Company file with this Commission amended rules which will contain provisions designed to put into effect the following principles:

Applicants for service shall be required to make a deposit unless they establish their credit to the satisfaction of the company. The amount of the deposit required shall not exceed the estimated bill for two months service except that where such amount is less than $5 the deposit shall be $5.

(2) It is *further ordered* that hereafter when service is discontinued the final bill rendered by the utility shall have credited thereon the consumer's deposit, if any, including interest thereon, and if a credit balance is thereby shown in favor of the consumer, the utility shall transmit with such final bill a check made payable to the depositor for such credit balance.

(3) That Order No. 657, dated December 21, 1926, is hereby amended so as to require interest to be paid on deposits at not less than 5 per cent from the date the deposit is made until the date service is discontinued.

(4) It is *further ordered* that the specific complaint of E. C. Riegel against the Washington Gas Light Company be and the same is hereby dismissed.

(5) That this order shall become effective on and after February 1, 1929.

ILLINOIS COMMERCE COMMISSION.

RE CHICAGO, AURORA & ELGIN RAILROAD COMPANY.

[No. 18603.]

Constitutional law — Confiscation — Limitation of rate adjustment.

1. A statute providing that a final order of the Commission should not be disturbed until after two years have elapsed cannot be constitutionally construed as restraining the Commission from directing a change in rates during such interim in order to avoid a confiscation of utility's property created by a continuation of the existing rate, p. 347.

Commissions — Power to reopen proceeding.

2. A law prohibiting the filing of applications or petitions seeking to disturb a final Commission order within two years of its adoption was held not to apply to rate changes not instituted by application or petition but brought up on the Commission's own order, p. 347.

Valuation — Necessity for valuation — Proposed rate increase.

3. It is immaterial what valuation may be arrived at for the purpose of testing proposed increased rates, assuming that such rate base will be within the range of figures in evidence, where the operating results after the establishment of such rates would be insufficient to produce a reasonable return, p. 349.

Return — Attraction of capital — Interurban railway.

4. For the rendition of that service to what the public is entitled it is essential that the railroad company earn sufficient moneys so that new capital may be invested in its properties, p. 352.

Return — Return as a whole — Freight and passenger business.

5. Notwithstanding the fact that freight and passenger traffic are more or less interdependent, the one cannot be made to bear the burden of the other, p. 352.

[January 17, 1929.]

PROPOSAL of a railroad company for increased rates; rates authorized.

By the **Commission:** Chicago, Aurora & Elgin Railroad Company filed its tariff, Ill. C. C. No. 86 on July 25, 1928, in which it is proposed to advance its passenger fares for 60-ride monthly commutation tickets and 10-ride and 25-ride bearer tickets between points on the railroad of said company. The effective date of said tariff was September 15, 1928, but the Commission, believing that an investigation should be made

concerning the reasonableness of said rates, suspended them by order entered September 11, 1928. Hearings were had at the office of the Commission in Chicago following the suspension order, the last hearing being held on December 31, 1928. Evidence was received from witnesses for the company and from objectors and from the Commission's engineering and accounting staffs bearing on the cost of the property, present and probable future revenues, cost of operation, rates on other lines of railway and other facts having bearing on the matter at issue, and the case is now before the Commission for determination.

On June 23, 1927, in Case No. 16462, the Commission entered an order approving increases in similar fares of said railroad company, and the record and order in that case are made part of the record and evidence in this case and frequent reference thereto was made at the hearings in this case.

The railroad company operates an electric railway, the cars taking their power principally from third rails, connecting Chicago with cities in the Fox River Valley from Elgin at the north to Aurora at the south. Entrance into the Chicago Terminal is obtained over the Garfield Park branch of the Chicago Rapid Transit Company. The easterly terminus of the railroad owned by the Chicago, Aurora & Elgin Railroad Company is Laramie avenue in the city of Chicago, the Rapid Transit line being used from thence easterly to the Wells Street station. No local service is carried by the railroad company east of Bellwood, all that service being rendered by the Rapid Transit Company over the tracks of the Chicago, Aurora & Elgin Railroad Company under contract heretofore approved by this Commission. The power used by the railroad company is obtained under contract, from Public Service Company of Northern Illinois, said contract having been approved by appropriate order of this Commission.

[1, 2] After petitioner's evidence was introduced certain objectors appeared and were permitted to enter their appearance, and on November 28, 1928, a motion was filed by objectors seeking dismissal of the case on the ground that an order was entered increasing fares on June 23, 1927, and contending that under the provisions of § 67 of the Public Utilities Act fares

could not be further increased until the lapse of two years, counsel for the objectors claiming that the railroad company could not file a petition or application for change of rates until two years had elapsed. The motion was taken under advisement by the Commission, to be determined with the determination of the principal case, and counsel agreed to file written arguments with the Commission. Such arguments were duly filed.

The question raised has never been determined by any court, although a somewhat similar question was before this Commission in Case No. 11893, P.U.R.1922B, 694, 697, wherein the Commission cited Peoples Gas Company to show cause why its rates should not be reduced, and in that case the Commission in its order stated: "Counsel for respondent argues that the expression of the statute in question precludes the reopening of any question settled by a final order for two years, except by the company affected. We are constrained to agree with counsel except that we believe the Commission has at least the same authority in the matter now under consideration, namely: the fixing of a reasonable and just rate to be charged by respondents as counsel argues the respondent company would have were they seeking to have the rates changed in their interest."

It will be noted that the Commission was then of opinion that the company could reopen the question within two years.

This case is not brought before the Commission by petition of the railroad company. It filed a schedule and hearings were had upon the order of the Commission suspending the schedule. To hold as counsel for objectors argued would require construction of § 67 entirely inconsistent with other sections of the Utilities Law, as, for example, § 33, referring to approving of rates from time to time, § 36 and § 41, giving the Commission the power to change rates. To give the effect to § 67 contended for by counsel would give meaning to that section which might well be construed to be unconstitutional, in that counsel contends that a rate providing adequate return at a given time could not within two years after the entry of an order establishing the rate be increased by further order. This under numerous rulings of the courts would be confiscatory. The supreme court of Illinois in

State P. U. C. ex rel. Quincy R. Co. v. Quincy, 290 Ill. 360, 365, P.U.R.1920B, 313, 318, 125 N. E. 374, has stated:

"It has long been a principle of constitutional law that in matters relating to the police power each successive legislature is of equal authority, and that a legislative body cannot part with its right to exercise such police power but has authority to use it again and again, as often as the public interests require."

Again on page 366 (P.U.R.1920B, at p. 318), referring to the previous statement, the court said:

"Accordingly the legislature cannot surrender or limit such powers, either by affirmative action or by inaction, or abridge them by any grant, contract or delegation whatsoever. The discretion of the legislature cannot be parted with, any more than the power itself. These principles apply to the police power delegated to municipal corporations. Thus the general police power possessed by a city is a continuing power and is one of which a city can not divest itself, by contract or otherwise. . . .

"The municipal authorities in this state have never been clothed with power to fix, by binding contracts, rates for any definite term of years."

And on page 369 (P.U.R.1920B, at p. 322) the court said:

"We think it has clearly been settled by the decisions of this court that the Public Utilities Commission of this state, under the Public Utilities Act, has had conferred upon it the power of changing the rates to be charged by public utilities corporations."

The statute in question, in consideration of the foregoing, cannot have application to rate changes, particularly where the proposed changes are not presented to the Commission by petition. It may well have application to cases involving certificates of public convenience and necessity to prevent continued litigation on alleged new statements of facts where Commission orders have been entered, but we cannot see its application to rate matters, particularly such as are presented in this case, and the motion must be denied.

Value of Property.

[3] In the order entered in Case No. 16462 on June 23,

1927, the Commission referred to the testimony given by the Commission's engineer as to value of property, stating that the appraisal amounted to $10,222,000, not including construction work in progress, investment in extensions nor in property leased to the Public Service Company of Northern Illinois, and certain other items which they did not have opportunity to check, and that the company's testimony showed capital investment of $14,216,000 and the Commission used as a rate base for testing the proposed rates the figure $10,000,000. In this proceeding the railroad company offered testimony showing investments in road and equipment, exclusive of leased power facilities, in the amount of $14,126,008.64. Testimony was likewise offered by Victor A. Dorsey, an engineer, who testified as to the value of the railroad company's physical property, and by George A. Andreson, who testified with respect to the value of real estate, but in the view that the Commission takes of this case it will be unnecessary to give serious consideration to this testimony. The Commission's engineering staff made a check of the inventory of the railroad company's property and a check of the additions and betterments, as well as retirements, to July 31, 1928, and an appraisal was compiled which was intended to be a conservative estimate of the cost to reproduce the physical property. The engineer's report of appraisal is that it represents a minimum cost on a reproduction basis, exclusive of items that were excluded in the previous case. The Commission's engineer testified to this minimum cost of reproduction as being $12,676,-464 as of July 31, 1928. He further testified that the railroad company has entered into a reconstruction program in which it is proposed to expend $2,500,000 over a period of five years in additions and betterments and reconstruction of that part of ways and structures on which excessive deferred maintenance had accrued, and further stated that considerable amount of capital expenditures had been made that had not yet been charged to capital account, being carried as work and progress, and that such amount was not included in the report. The railroad company has taken the position that it is immaterial what valuation may be arrived at for the purpose of testing the proposed rates, assuming that such rate base will be within the range

of the figures in evidence, because the operating results after establishment of proposed rates would be insufficient to produce reasonable return, and the Commission is inclined to agree with this position and it is not unreasonable to use as a figure for testing the proposed rates the sum of $12,500,000.

Operating Expenses and Return on Investment.

Evidence was offered by the railroad company as to its operating expenses and these were checked by the engineering staff of the Commission. For the twelve months ended July 31, 1928, the net railway operating revenues were $399,085.36. There were additions to this thru nonoperating income and deductions of taxes assignable to railway operations, income from leased power facilities, and the gross income according to the railroad company's books applicable to return, interest, amortization, and miscellaneous debits amounts to $427,910.52. The Commission's engineers direct attention to the fact that no allowance was made for depreciation on ways and structures, as none had been set up by the company for the year ended July 31, 1928, but an allowance of $53,000 for depreciation of equipment has been included. They also stated that there will be an increase in wages of approximately one cent per hour to approximately all employees except those in the office and in the track and roadway department. They also direct attention to the fact that trucks and motive equipment of cars appear to be well maintained, but that practically no maintenance work has been done on car bodies, and to the fact that the company is using as many as 84 of its 85 passenger cars available during its peak commutation load. The Commission's engineers estimate a net income from operations at $425,387 giving effect to the proposed rates, as compared with $422,476.61, the similar estimate of the railroad company's witness. This gives effect to total net revenues from all classes of operations by the company. For the year ended July 31, 1928, there was available for return $323,616, which is equivalent to 2.58 per cent on the above assumed rate base. The railroad company estimates additional revenues in the amount of $98,860. If these figures be correct, on the assumed rate base the return would be 3.38 per cent. The Commission's

engineer's estimate would provide a return of 3.4 per cent on the assumed rate base.

The proposed rates are established as nearly as possible upon the following bases: Between Chicago and points east of Elmhurst at 1.2 cents per mile; between Chicago and Elmhurst and Villa Park 1.1 cents per mile; between Chicago and Lombard 1.05 cents per mile; between Chicago and Wheaton and Glen Ellyn 1 cent per mile; between Chicago and Warrenville and Lakewood and West Chicago, .9 cents per mile, and between Chicago and Fox River Valley cities .8 cents per mile, with a minimum of $7 per month for any 60-ride ticket. These calculations are made on the basis of an average use of 50 rides per month.

The rate on 25-ride tickets is figured at 1.9 cents per mile, and on 10-ride tickets at 2 cents per mile. The railroad company proposes to include Laramie avenue station in Chicago as a free transfer point to the cars of the Chicago Rapid Transit Company in addition to transfer points now established at Marshfield avenue and Canal street, enabling east-bound passengers to change to cars of the Chicago Rapid Transit Company without extra charge.

[**4, 5**] In the proposed rehabilitation and improvement of its property the railroad company will be required to expend large sums of money. Since the issue of its original capitalization it has not issued or disposed of any bonds or stock because its earnings have been insufficient to warrant such disposition. For the rendition of that service to which the public is entitled it is essential that the railroad company earn sufficient moneys so that new capital may be invested in its properties. While the railroad company has earned its interest charges, its earnings have not been sufficiently in excess of such charges so that it would be warranted in making any offering of securities. The service that has been rendered has been reasonably good; there have been complaints, and there always will be complaints by some person, regardless of the class of service rendered. The railroad company has expended approximately $1,800,000 which has not been financed thru issuance of stocks, bonds, or long term securities, and which under proper earning conditions it is entitled to

capitalize. It contemplates still further improvements to its service. To enable it to provide that high degree of service to which the public is entitled it must receive greater net income. This can be accomplished by increasing its business in all its departments provided operating expenses are not correspondingly increased, and by means of increased rates. Its freight business has shown steady increases with reasonable promises for the future, so that improvement may be looked for in this direction in years to come. Tho the freight and passenger traffic are to greater or less degree interdependent, the one, however, cannot be made to bear the burden of the other. The single trip passenger tickets are sold at the rate of 3.6 cents per mile, the rate charged by competing steam railroads, under injunction order of the United States District Court for the Northern District of Illinois, Eastern Division. The proposed rates will be in excess of the rates of steam railroads centering in Chicago, with but very few exceptions, and are considerably lower than the rates charged by comparable electric railroads centering in Chicago viz., Chicago, North Shore & Milwaukee Railroad Company and Chicago South Shore & South Bend Railroad Company. While these rates are in excess of competing steam railroad rates and in consequence there will be some loss of this nature of traffic to competing steam railroads, on the other hand the service rendered by the railroad company is of such character as will undoubtedly retain a very large percentage of its customers and attract others. Direct connection with the Chicago Rapid Transit Company is afforded, the Chicago Terminal is within the loop, the frequency of service rendered by this railroad company is much greater than that rendered by competing steam railroads, and with these considerations the Commission is not inclined to agree that there will be anywhere near the falling off of traffic feared by two objecting witnesses, who may be described as commuters. A significant statement by one of these witnesses was to the effect that he believed there would be a falling off of 25 per cent of the traffic, yet he himself was not certain that he would discontinue the use for the very evident reason that the railroad company rendered a service more useful to him than that of two competing steam railroads.

At the hearing of the case the railroad company directed the attention of the Commission to the fact that in the published Tariff No. 86 there were certain errors, and suggested that in the event the Commission approved the increased rates that same be approved with corrections as suggested, and that the tariff become effective upon the filing of a revised tariff, on one day notice under Commission order.

In the view we take of the case this should be done, and the order will be made accordingly.

The Commission having considered the facts of record, the representations and arguments made, and being fully advised in the premises, finds as follows:

1. That the present rates of monthly commutation fares and for 10-ride and 25-ride tickets charged by the Chicago, Aurora & Elgin Railroad Company are inadequate and insufficient.

2. That the rates of fare proposed herein are not excessive and will not yield said railroad company an excessive return upon the rate base of $12,500,000 hereinabove used to test the proposed rates; and

3. That the proposed rates of fare as revised should be made effective as hereinafter authorized.

INDIANA PUBLIC SERVICE COMMISSSION.

RE INDIANAPOLIS WATER COMPANY.

[No. 9588.]

Service — Meters paid for by consumers — Public relations.

1. A practice of a water company requiring consumers to meet the cost of meter installation was modified in view of the burdensome character of such a practice and the impairment of public relations that resulted therefrom, p. 358.

Rates — Change from flat to meter rates — Water.

2. A water company should not change consumers from flat rates to metered service until after the expiration of any period for which payments for service under the flat rate have been made in advance, provided, that if flat rate patrons be metered, they should pay at flat rates until the installation of a new meter, p. 358.

P.U.R.1929B.

Payment — Meter deposit — Owners of rental property.

3. Meter deposits should not be required of the owner of rental property where the owner and not the tenant pays the water bill, and where such deposits have been received they should be returned to property owners making the same, p. 358.

[January 4, 1929.]

INVESTIGATION by the Commission on its own motion into the rules, regulations and practices of a water company; modifications directed.

Appearances: Asa J. Smith, Attorney, representing Robert L. Moorhead, a consumer, and other consumers; L. R. Zapf, Attorney, representing plumbers; Smiley Chambers, Attorney, for city of Indianapolis; Fred Bates Johnson, Attorney, J. J. Daniels, Attorney, H. S. Schutt, Vice-President, H. S. Morse, General Manager, representing Indianapolis Water Company.

Ellis, Commissioner: On December 8, 1928, the Public Service Commission of Indiana, on its own motion, instituted an investigation of the rules, regulations, and practices of the Indianapolis Water Company relating to meterization. The formal order made by the Commission in part is as follows:

"It is therefore *ordered* by the Public Service Commission of Indiana, that an investigation be, and it is instituted, on its own motion, of the meterization program of the Indianapolis Water Company, the scope of said investigation to include all pertinent matters, and special attention to the following:

"1. Advisability of recision, modification, or alteration of the order of November 28, 1923, P.U.R.1924B, 306, with respect to meterization by the Indianapolis Water Company—Order No. 7080, page 31, paragraph 1—

"'It is *further ordered,* that the Indianapolis Water Company be, and it is authorized and directed to proceed more rapidly with its metering program, to the end that as full a metered basis as practical be obtained as soon as possible; that the option of installing meters shall rest with the company; and that, as a general policy, the larger consumers be metered before the smaller consumers.'

"2. Alleged arbitrary and unlawful acts of the company in connection with the carrying out of its meterization program." P.U.R.1929B.

The matter was set for hearing at the State House, Indianapolis, Indiana, December 27, 1928 at 10 A. M., and legal notice of the time and place of said hearing given as required by law.

Prior to the hearing the Commission caused its service, accounting, and engineering departments to make certain investigation of matters relevant to this inquiry and the results of such investigations were submitted in evidence at the hearing.

The service director of the Commission testified that he had received numerous complaints concerning the meterization program of the Indianapolis Water Company, such complaints including, among other things, the following:

1. Objection to the consumer paying the cost of meter installation;

2. Objection to alleged excessive charges for meter installation, especially for meter pits in connection with outside meter installation, made by those installing meters.

3. Objection to practices on the part of the company in some instances in discontinuing service to patrons who had paid their bill in advance, on the flat rate schedule, for failure on the part of the patron to install meters during the period for which payment had already been made.

In addition to the testimony above indicated, the service director presented the result of a state wide survey of the practices of other Indiana water companies in connection with meterization.

A member of the Commission accounting staff presented testimony, including exhibits, concerning the progress made by the company in meterization and concerning meter deposits.

The chief engineer of the Commission presented testimony concerning actual costs of recent meter installations. He also testified concerning estimated costs of inside and outside meter installations on an actual cost basis. From the testimony of this witness, it developed that the company has sold certain materials to those making meter installations at a price in excess of that paid the manufacturers.

A number of patrons of the company appeared at the hearing and gave evidence in support of that offered by the Commission's

service director. From the testimony of one of these witnesses, it developed that it had been the practice of a high official of the company, in one instance, to state to a dissatisfied patron, that the company did not desire to meterize its consumers, but was forced to do so by the Public Service Commission.

Opportunity was given counsel for all parties appearing to cross examine all witnesses.

At the conclusion of the hearing of the Commission and consumer witnesses, the company requested time to prepare its case and was granted a continuance to January 7, 1929, for further hearing.

The Commission has, under date of January 3, 1929 received the following communication from the company:

"Indianapolis, January 3, 1929.

"Hon. Howell Ellis, Commissioner,
Public Service Commission of Indiana,
401 State House, Indianapolis, Ind.

In Re: P. S. C. I. Cause No. 9588.

Dear Sir:

"At the conclusion of the day's hearing in this matter held on the 27th day of December, 1928, the Commission, as you will recall, at the request of the Indianapolis Water Company, fixed January 7, 1929, as the date for further presentation of testimony by the water company.

"Upon consideration of the testimony which was introduced at the first hearing and the facts adduced upon the cross-examination of the witnesses, we have concluded that there is no necessity for taking up the time of the Commission by the introduction of further testimony. Therefore, subject to the approval of the Commission, the Indianapolis Water Company hereby withdraws its request for an opportunity to present additional testimony.

Very truly yours,
INDIANAPOLIS WATER COMPANY
By (signed) H. S. Morse,
H. S. Morse, General Manager."

In view of the above, the hearing set for January 7, 1929, is unnecessary and is hereby cancelled.

It appearing that the Commission is now in a position to make findings and an order on the evidence submitted at the hearing December 27, 1928, such action will be taken.

[1] The evidence clearly shows, in the opinion of the Commission, that some modification should be made in the rules, regulations, and practices of the Indianapolis Water Company in regard to meterization. While meterization appears desirable, it should not be continued except under modified regulations and practices. The practice of requiring consumers to meet the cost of meter installations appears, from the evidence, to be particularly burdensome at this time. The company has been too quick to adopt the extraordinary measure of shutting off service in dealing with its patrons. The existing practices, in some instances, have been arbitrary and unreasonable and have strained the public relations of the company. In view of the evidence submitted, the Commission finds as follows:

1. That the Indianapolis Water Company, from and after this date, should make all meter installations, including pits, at the expense of said company (which said cost shall not be excessive) except in cases of the construction of new structures where such meter installation is a part of the general plumbing contract.

[2] That the change of a consumer from flat rate to metered service shall not be made until after the expiration of any period for which payment for service under the flat rate has been made in advance, provided, however, that if and when a flat rate patron is to be metered, if the meter is not installed at once upon the beginning of a new quarter, the patron shall pay at a flat rate until the meter is installed and on a meter basis thereafter.

[3] That meter deposits shall not be required of the owner of rental property where the owner and not the tenant pays the water bill, and that if any such deposits have been received, that they shall be returned to property owners making the same.

An order will be made in accordance with the above findings.

The Commission appreciates the appearance and assistance of

counsel for certain consumers and the city of Indianapolis in connection with the hearing had in this matter.

Singleton, McCardle, Harmon, concur; McIntosh, absent.

IOWA SUPREME COURT.

INCORPORATED TOWN OF MAPLETON
v.
IOWA PUBLIC SERVICE COMPANY.

[No. 39587.]

(— Iowa, —, 223 N. W. 476).

Monopoly and competition — Duty of municipality.

1. A municipality which exercises the power over a public utility to fix its rates owes a corresponding duty to protect such utility against unfair competition by reason of such regulation, p. 363.

Rates — Power of municipality to fix minimum.

2. The rates charged by a public utility must be neither greater nor less than those fixed by ordinance of a municipality having authority to regulate such rates, p. 363.

Municipal plant — Limitations and liabilities.

3. A municipally owned utility plant is a private enterprise subject to the same liabilities and limitations as any other public utility, and must, therefore, operate under precisely the same regulation, p. 365.

Constitutional law — Discrimination in favor of municipal plant.

4. A town in its governmental capacity can extend no discriminating favors to a municipal plant operated by itself in its proprietary capacity and can impose no rates which are not applicable alike to such a plant as well as a private plant operating within the corporate limit p, 365.

Monopoly and competition — Municipal plant — Electricity.

5. A municipal plant operated under restrictions of statute has no right to lose money in order to meet rate cutting by a competitive private plant, where such a cost would require the departure from an ordinance rate fixed as being reasonably compensatory, p. 365.

Constitutional law — Right to engage in rate war.

6. A public utility operating under a franchise has no constitutional right to compete in rates with other utilities, p. 367.

Monopoly and competition — Duplication of franchises.

7. The power of statutory regulation is not affected, nor is the character of the business, as a monopoly, changed by the fact that two franchises are granted and accepted by the respective companies, each of which tenders its service to the patrons, p. 367.

Monopoly and competition — Municipal plant — Rate ordinance.

8. A municipality in the exercise of its governmental function of rate making does not discriminate against a private plant competing with its own municipal plant where the rate ordinance promulgated is applicable alike to both franchise holders, p. 367.

Monopoly and competition — Duty of municipality — Rate making.

9. A municipality in the exercise of its statutory powers to fix rates owes a corresponding duty to each franchise holder regardless of whether or not they be competitive utilities, to enforce such rates uniformly and impartially against both, p. 367.

Rates — Power of municipality — Minimum.

10. A statute delegating to a common council the power to regulate and fix utility rates was held to give such body the power to fix a minimum as well as a maximum rate, p. 367.

(Albert, C. J., and Faville, J., dissent.)

[February 12, 1929.]

Suit by a city against an electric company for an injunction to restrain the latter from violating a rate ordinance; decree for the city in lower court sustained on appeal.

Appearances: Price & Burnquist, of Ft. Dodge, for appellant; George A. Rice, of Mapleton, and C. E. Cooper, of Onawa, for appellee.

Evans, J.: The case is the first of its kind to come before us. The plaintiff is an incorporated town. The defendant has a franchise to operate its utility therein. In February, 1928, the city council adopted an ordinance, known as No. 172, which fixed a graduated scale of rates to be charged by the utility company. This ordinance provided a rate of 13 cents per kilowatt for the first 25 units, with a graduated scale at lesser rates for larger quantities. For the purpose of our discussion we need only to consider the 13-cent rate. Nor need we set forth the details of the ordinance in other respects. The defendant published a schedule of rates, which it proposed to put into effect contemporaneously with the ordinance schedule, and which was lower in some of its items than the ordinance rate. The rate thus pub-

lished by the defendant for the first 25 units was 12 cents per kilowatt. The demand of the plaintiff is that such item in the defendant's schedule shall be put up to 13 cents in obedience to the ordinance. The response of the defendant is that the ordinance is void, in that it is unauthorized by the statute and forbidden by the Constitution of the United States. The dispute is concentrated upon § 6143 (Code) and the proper interpretation thereof. This is as follows:

"6143. *Regulation of Rates and Service.* They shall have power to . . . and to regulate and fix the rent or rate for water, gas, heat, light or power; to regulate and fix the rents or rates of water, gas, heat, and electric light or power; to regulate and fix the charges for water meters, gas meters, electric light or power meters, or other device or means necessary for determining the consumption of water, gas, heat, electric light or power, and these powers shall not be abridged by ordinance, resolution, or contract."

The defendant contends for an interpretation of this section to the effect that it fixes only a *maximum* rate, beyond which the utility company may not go, and that it does not forbid the exaction of a lower rate than is thus fixed by the ordinance. On the other hand, the plaintiff contends for a literal interpretation of the statute, to the effect that power is conferred upon the city council to regulate and *fix* the rates. Elaborating a little further the defendant's argument, it is that the rate fixed by the ordinance is presumptively reasonable as a maximum rate; that, if 13 cents is a reasonable rate, then any rate below 13 cents is necessarily reasonable; that the only function of the city council is to fix a reasonable rate; that, if the defendant maintains a reasonable rate, it puts itself beyond the power of interference by the plaintiff. The counter contention of the plaintiff is that only the 13-cent rate is presumptively reasonable, and that the burden is upon the defendant to show it to be unreasonable, before it can assert a right to make another rate, be it higher or lower. This will indicate the general character of the contest.

The anomaly of the situation is that we have never hitherto had before us a municipality as a litigant contending for an uplift in rates, nor a public utility contending for the right to

reduce them. The briefs are voluminous, and have covered the whole field of rate regulation of public utilities and of other private property affected with a public use. But in all the volume of these citations, in both briefs, no hint is contained of the respective attitude of the combatants as they appear herein. As argued by the defendant, in no case that has come before us has a public utility ever been challenged in its right to *lower* its rates. Nor, for that matter, has a municipality ever been challenged in its right to *increase* the rates. One observation is as good as the other, and both of them rest upon the same reason. On the face of the record, each party appears to be contending for the privilege of generosity toward the other. Apparently, also, neither party has a grievance. The municipality offers 13 cents, and the public utility responds that 12 cents will be quite enough. If we should stop here, the proceeding would invite a dismissal for want of subject-matter of the litigation. And this presents in a nutshell the contention of the defendant. The reader of the foregoing will naturally query: What *is* the matter? Where is the storm area? Why the tempest? Here is the rub.

The incorporated town of Mapleton owns and operates a municipal plant in its proprietary capacity. The result is that this plaintiff in its governmental capacity has within it two public utilities. The question is, may they compete in rates? If so, to what extent? Does § 6143 cease to operate in such a case? Has the city council any power of regulation, provided the battle field is below the snow line? Has the city, in its governmental capacity, any interest to be subserved by stopping a rate war? If both competitors were of a like kind, and if the city were not the proprietor of one of them, would the city have any interest to subserve by this litigation? It is the contention of the defendant that it would not; that it is using its governmental robes as a cover for the protection of its proprietary interest; that the exercise of its power in such respect is mere favoritism and in its own interest; that the defendant has a constitutional right to compete, and to challenge any competitor, be he man or municipality; and that there is no constitutional power in the city council or in the legislature to restrain it, if it keeps its prices

below the 13-cent rate. Its further argument is that it has a right to manage its own property in accord with its own policies, subject only to a *maximum* rate; that § 6143 should be so construed, in order to save its constitutionality.

The words "maximum" and "minimum" have been used in the briefs in a double or ambiguous sense, which we shall aim to avoid in this discussion. The ordinance under attack fixes a "top" rate of 13 cents for the first 25 units and a "bottom" rate of $1 per month to be charged where the customer uses less than $1 worth at the 13-cent rate. These two rates are referred to as the "maximum" and "minimum." Manifestly the "bottom" rate may be a *"maximum"* as well as a "minimum." Such a rate represents the "maximum" which may be charged to the "minimum" customer. Manifestly, also, the "top" rate may be both a "maximum" and a "minimum." Whether it is such or not, in this case, is the crux of the controversy. The defendant contends that the "top" rate is intended as a *maximum* only; whereas, the plaintiff contends that it is both a maximum and a minimum. Both briefs apparently concede that the $1 rate is both minimum and maximum. It will be seen from the foregoing that the argument for the defendant in its various phases raises the following questions:

[1, 2] Does § 6143 in terms empower the city council to fix a "top" rate, which shall be both maximum and minimum? If so, is it unconstitutional?

Does the defendant have the constitutional right to *compete* with the municipal plant, and to lower its rates for that purpose?

Has the plaintiff town in its governmental capacity any right or interest to restrain competition between the two public utilities, so far as the question of rates is concerned?

I. The fundamental proposition in the defendant's argument is that, subject to the right of the municipality to impose upon it a reasonable maximum rate, its constitutional right, as the owner of the property, to adopt its own policies and to enforce its own methods, and to compete with its competitor, and to win or lose thereby, is absolute. The proposition is not wholly tenable. The owner of private property, voluntarily devoted to public use, necessarily surrenders some of his rights, and subjects

himself to reasonable municipal regulation. The major right thus surrendered by him is that of fixing the price of his service or commodity. The Constitution protects him against confiscation by guaranteeing him that the price fixed by the municipality shall not be unreasonable. The defendant recognizes that the municipality may set a maximum limitation upon it. Ordinarily that would be the only point at which the respective interests of the public utility and its patrons could clash. But the defendant contends that it still retains its constitutional right of competition by lowering its rates.

The argument at this point is that, if the two competitors were to agree together not to compete, such agreement would be void as a fraud upon the public, and as creating a monopoly. When the owner of private property devotes it to the public use, as herein, he voluntarily retires from the field of competition, so far as the question of rates is concerned. It is the public, as patron, which is interested in free competition. A municipality is the representative of the public *pro tanto*. When it exercises the power of fixing rates, it waives competition and establishes a quasi monopoly. In the field of unregulated enterprise, competition tends to secure reasonable prices. Collusion between competitors creates secret monopoly. The evil of monopoly is that it tends to create unreasonable prices. A public utility becomes, by the common consent of owner and the public, a monopoly. The evil which would ordinarily arise therefrom is avoided by public regulation. It does not result in unreasonable prices, because the public tribunal is charged with the duty of fixing reasonable ones. Ordinarily, in such a town as the plaintiff, there is but one public utility. Nor is more than one usually needed; so there is no occasion or opportunity for competition.

But it is argued that, when the public utility accepts the limitation of a maximum price, it must then be deemed at liberty, in the field of lower prices, to compete with its competitor when it has one, and to do so by the cutting of rates, and that this is no concern of the municipality. The presence of two public utilities in one little town is one of the anomalies of this case. Inasmuch as both are regulated, the municipality has no need of a competition of rates in order to avoid a monopoly. Has the munic-

ipality any interest in restraining a rate war between the two utilities? A little town with two utility companies might be likened to the owner of a menagerie, whose wild animals are prone to fight, if they come to contact. It is quite to the interest of the owner to prevent the contact. Moreover, the municipality, which exercises the power over a public utility to fix its rates, owes a corresponding duty to protect such utility against unfair competition by reason of such regulation. The railway legislation of the country gives universal recognition to this principle. Rates fixed under the supervision of the Railroad Commission must be adhered to by every carrier. The rate charged must be neither greater nor less than that fixed in the schedule. We think that the plaintiff may likewise enforce its ordinance rates.

[3] II. In our foregoing division, we have ignored the fact that the defendant's competitor is the municipality itself, acting in its proprietary capacity. Does this fact give to the defendant a wider scope of action in the way of competition? It is argued for the defendant that a municipally owned utility plant is a private enterprise, and that it is subject to the same liabilities and limitations as any other public utility. Let this be granted. It operates under precisely the same regulation as does the defendant.

[4, 5] Though the town in its governmental capacity could be deemed as partial to its own child, yet it can extend no discriminating favors thereto. It can impose no rates which are not applicable to both plants. The municipal plant can threaten the defendant with no competition in rates. It cannot even meet the defendant's cut in rates. It was acquired pursuant to statutory provisions and by means of special taxation. Its ownership by the municipality is in the nature of a trusteeship. The exercise of governmental functions were requisite in order to effect its acquisition and its operation. The operation must be under the restrictions of the statute. If the defendant should adopt a rate unreasonably low, and should be willing to lose money by reason thereof, the municipal plant would be powerless to meet such cut. It has no right to lose money. It has no right to depart from the ordinance rate. The ordinance rate is fixed as being

reasonably compensatory, and as being necessary to the successful operation of the plant.

It appears from the record that this plant was established in 1925; that the franchise now owned by this defendant was then owned by its predecessor; that such franchise holder had been able to maintain rates, for a brief time, as high as 26 cents; that, at the time of putting in operation the municipal plant, the rate in effect was 16 cents. The defendant thereupon published a rate of 15 cents. This was later adopted as an ordinance rate; whereupon the defendant published a rate of 14 cents. In like manner a 14-cent rate was adopted by ordinance, and the defendant published a rate of 13 cents. Ordinance No. 172 was then passed, and the rate of 13 cents was therein adopted, only to be followed by the publication of a rate of 12 cents by the defendant. It should be said for the defendant, however, that it covers a large territory in northern Iowa and furnishes services to more than 100 towns; that it classifies them according to population, and fixes a uniform rate for each class; that the town of Mapleton properly belongs in the class to which the defendant extends a rate of 12 cents.

The defendant argues, therefore, that it is guilty of no discrimination, and that it is simply extending to its Mapleton customers the same rate as it extends to all other customers in the same class. If the issue here were whether the defendant intends at all events to maintain a rate one cent below that of the municipal plant, the fact that it extended the same rate to other towns would be worthy of consideration. The fact remains, regardless of the ultimate intent of the defendant, that its maintenance of the reduced rate will force the other plant to adopt it or to close its doors. Moreover, the defendant frankly argues that the purpose of the lower rate is to induce additional customers. In the light of the evidence and of the argument, the fair inference is that the defendant intends to meet the ordinance rate, whether the present one or a lower one, with a competitive rate one cent lower. If this can be lawfully done, then a municipally owned plant must always be at the mercy of the owner of a privately owned plant, when such owner chooses to inaugurate a rate war and to take a loss therefrom. The exercise or existence

of such a power is antagonistic to the whole scheme of public service by utility companies, and is inconsistent with the principal of rate regulation.

It seems plain enough that the municipal plant must charge the ordinance rate. Why should the statutory mandate speak otherwise to the defendant? Under the literal terms of the statute (§ 6143), the rates are *fixed* for both plants, and each of them is bound to conform thereto. In order to sustain the defendant's position, it would be necessary to add qualification to the terms of the statute to the effect that the rate fixed is a maximum one only. There can be no legitimate construction of the statute to that effect, unless it be necessary to save its constitutionality. Such necessity is not present.

[**6–10**] Our conclusions on the whole record may be summed up briefly: A public utility, operating under a franchise, has no constitutional right of *competition*. Moreover, a rate war is not necessarily competition. It may be, and usually is, a mere fight, which bodes nothing to the public but disorder and disorganization. The business of a public utility, under statutory regulation, becomes by force of the statute, a legal monopoly. The power of statutory regulation is not affected; nor is the character of the business, as a monopoly, changed by the fact that two franchises are granted and accepted by the respective companies, each of which tenders its service to the patrons. The advantage of a monopoly is its economy. Though there be a splitting of this benefit where the business is divided between two franchise holders, the evil of monopoly in unregulated enterprises is wholly avoided by statutory regulation. Though it be true that the town in its governmental capacity has a necessary interest in its own plant, and might, therefore, be deemed disposed to discriminate against the defendant, in the exercise of its governmental functions, yet it has not done so. The ordinance is applicable alike to both franchise holders.

The defendant does not claim that the ordinance threatens the confiscation of its property. Indeed, in its last analysis, it does not complain of the ordinance at all. Its fundamental complaint is of the literal terms of the statute. It asks that these terms be qualified and limited by judicial interpretation. The statute it

the arbiter to which complaint is directed and not the plaintiff town. The plaintiff, having exercised its statutory power to fix the rates, owes a corresponding duty to each franchise holder to enforce such rates uniformly and impartially against both. In doing so it is performing its plain public duty. Nor has it any discretion to qualify the requirement of obedience, which the statute makes upon the franchise holders. We hold that the statute (§ 6143) is definite in its terms and free from ambiguity and that it provides for a *fixed* rate. So construed, it operates equitably and consistently with all the other statutory regulation of property devoted to public uses, and it contravenes no constitutional right of the defendant.

We find no authority, cited in either brief, which holds otherwise than herein, or which sustains the fundamental proposition of the defendant. We have said in the foregoing that the precise question has not hitherto been before us; nor has it been considered by any other court. This statement should be qualified to the extent that the Supreme Court of California has had before it, in two cases, a question closely akin. Pinney & Boyle Co. v. Los Angeles Gas & E. Co. 168 Cal. 12, 141 Pac. 620, L.R.A.1915C, 282, Ann. Cas. 1915D, 471; Economic Gas Co. v. Los Angeles, 168 Cal. 448, 143 Pac. 717, Ann. Cas. 1916A, 931. In each of these cases that court held that a rate fixed by the Public Service Commission was binding, both as a maximum and a minimum.

III. It appears by § 6 of Ordinance No. 172 that penal provisions are adopted which are very severe. The defendant contends for the invalidity of this section. It has not been enforced. The plaintiff claims nothing for it in argument. It is not essential to the validity of the rest of the ordinance. We need give it no further attention.

It is our conclusion that the defendant must obey the ordinance according to its terms and charge the fixed rates thereof. And this applies also to the requirement that a deposit of $5 be made by each customer, as security for the payment of his bills.

The decree of the district court is accordingly affirmed.

De Graff, Morling, Kindig, and Wagner, JJ., concur.

P.U.R.1929B.